









The  
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(FOURTH SERIES, VOL. XXII., 1896-97.)

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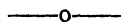
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# Law Magazine and Review.



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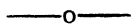
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# THE LAW MAGAZINE AND REVIEW.

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No. CCCVI.—NOVEMBER, 1897.

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## Obiter Dicta.

THE opening of the new Michaelmas Sittings was marked by the attendance of the Lord Chancellor, many of the Judges of the High Court, and a large number of the Bar at Westminster Abbey, where a special service to inaugurate the commencement of legal work was performed at 11.45 a.m.

---

The service was a shortened form of Matins, and was said by the Precentor, the Rev. Dr. Troutbeck. The *Kenite*, Psalms, and *Te Deum* (Stanford in B flat) were sung, and the Apostles' Creed recited; but there was only one lesson read by the Dean and appropriately chosen from the 10th chapter of Deuteronomy, in which it said that God "doth execute the judgment of the fatherless and widow." The anthem was by Sir Frederick Bridge, and composed for the Jubilee, and was taken from the 24th Psalm, "Who shall ascend into the hill of the Lord?"

---

This is a new departure in these latter days, and carries us back to the pre-Reformation times, when the Mass of the Holy Ghost was said preparatory to the legal term. In the Temple, Mass appears to have been daily said.

---

We extract the following from the Orders of the Middle Temple (*Temp. Hen. VIII.*):—"The Manner of Divine

Services in the Church, and their Chardges thereunto. Item, that they have every day three masses said, one after the other; and the first masse doth begin in the mornyng at seaven of the clock, or thereabouts. The festivall days they have mattens and masse solemnly sung; and during the matyns singing, they have three masses said. Their chardges towards the salary, or mete and drynke of the priests, is none; for they are found by my lord of St. John's, and they that are of the fellowship of the house, are chardged with nothing to the priests, saving that they have eighteen offring days in the yeare, so that the chardge of each of them is xviid.

---

Stow ("Survey of London," Vol. I., p. 745), writing towards the end of the 16th century says: "This Temple Church hath a Master and four stipendiary priests, with a clerk . . . these have stipends allowed them out of the revenues of the late hospital and house of St. John of Jerusalem in England."

---

The "Red Mass," in Lincoln's Inn Fields, which has for years set the example, was attended by a far larger number than on previous occasions. Mass was said by the Rev. M. Fitzgerald, Rector of the Church, and the music included Schubert's "Ave Maria," Sheppard's "O Salutaris," and Niedermeyer's "Pater Noster." The celebrants were vested in red, and the altar draped in the same colour and decorated with red and white flowers. The Lord Chief Justice was unfortunately prevented by illness from being present, and Mr. Justice Day was at the Old Bailey, but the congregation included Mr. Justice Mathew, Judge Bagshawe, Q.C., Mr. Joseph Walton, Q.C., Mr. H. Shee, Q.C., Mr. Bowen Rowlands, Q.C., and others.

Since last October we have lost Sir Edward Kay, who had retired before his lamented death; also Mr. Justice Cave. Lord Esher is missed, but Sir Nathaniel Lindley, his successor, is warmly greeted. The same may be said of Mr. Justice Bigham and Mr. Justice Channell. The appointments of Lord Justice Collins and Lord Justice Vaughan Williams are excellent.

---

The *Chicago Law Journal* relates the following anecdote of one who, next to Chancellor Kent, is recognised as perhaps the greatest equity judge who ever sat in that country:—

“Chancellor Walworth, according to Mr. Clinton, was responsible for the abolition of the Chancery Court in New York State. He interrupted counsel continually, his interruptions often becoming a discursive and aggravating warfare on the pleader. On one occasion a lawyer commenced to argue a case before him. He had hardly begun when the Chancellor interrupted, telling him that he had brought his action ‘all wrong;’ it should have begun in a different way, which he specified. The lawyer replied that he did not feel at liberty to go against all the decisions applicable to the subject. He said he could find no authority in favour of the course which the Chancellor had suggested. The latter, with no little impatience, said: ‘Then you should have retained counsel who would have advised you to bring the action as I have suggested.’ The lawyer replied: ‘Since your honour went on the Bench there has been no counsel at the bar to whom I could have applied who would have given such advice.’”

---

The *Law Times* says:—

“Yet another highly controversial measure may be mentioned in the Workmen (Compensation for Accidents) Act introduced by the Home Secretary. In a previous administration, a system of severe penalties had been proposed in order to bring home responsibility to employers. This proposal collapsed. The present Act seeks the same end by different means. An experi-

mental and of intention narrow measure, it applies to a few out of many industries. Employers in the departments of industry represented by railways, factories, mines, quarries, or engineering works, persons dealing with buildings over thirty feet high by way of construction, demolition or repair by scaffolding, or on which steam, water, or other power is used, are liable to compensate workmen for personal injuries arising out of and in the course of their work. The scale of compensation is indicated by a schedule. Where the injury is due to the act of a stranger under circumstances creating a legal liability to pay damages in respect thereof, the workman can proceed either against the stranger or the employer. In the latter event, the employer can enforce, in the workman's name, all rights of action possessed by him against the person causing the injury. Sect. 2 provides that no liability accrues in respect of injuries disabling the employé for less than two weeks from earning full wages at his work. The ordinary civil liability of an employer for damage caused by his own negligence and default, or that of some person for whom he is responsible, is untouched. The amount of damages can be determined either by arbitration in accordance with another schedule or by the old procedure. An employer, however, cannot be attached both under the Act and independently of it. It is necessary for a workman to give notice at once of an accident and to claim compensation within six months, or, in case of death, for his representatives to claim within one year; but an omission to comply with this is not fatal unless the employer is thereby prejudiced in his defence. In the House of Lords an amendment was carried by which, if the accident is found to be attributable (not 'solely' attributable) to the serious and wilful misconduct of the sufferer, he can claim no compensation."

---

The London County Council are considering the desirability of obtaining an amendment of the Summary Jurisdiction Act, 1879, so that Justices out of Quarter Sessions may deal summarily with cases of false pretences. We hope that the Legislature will not intrust such cases, wherein the line between crime and debt is often of the thinnest, to our crassid Dogberries, paid or unpaid.

## I.—THE SILVER OAR OF THE ADMIRALTY.

**T**HE Silver Oar is emblematic of the jurisdiction of the Admiralty. It was, and is always, used in all Admiralty Courts, as well as on other occasions when any matter connected with the Admiralty jurisdiction arises.

When Admiralty Sessions for the trial of offences committed on the high seas were held at the Old Bailey, in London, for the trial of offences committed on the high seas, under the Statute 32 Geo. II., cap. 25, the Commissioners attended by the Doctors of Law, Advocates, Proctors, and others, were preceded on entering into Court, by an officer carrying the commission for holding the Admiralty Sessions, and by another officer carrying the Silver Oar. The Oar was also used at executions.

The account of the execution of Captain William Kidd (May 23rd, 1701), states that he and the rest of the pirates were conveyed from Newgate to Execution Dock, at Wapping, "by the officers of the Admiralty and others carrying the Silver Oar before them according to the usual custom on such occasions."

Execution Dock was on the left bank of the Thames just below the Wapping New Stairs, and is described by Stow (B. IV., p. 37) as "the usual place of execution for hanging pirates and sea rovers at the low water mark, there to remain till three tides had overflowed them." The *Gentleman's Magazine* for 1796 contains an account of three sailors, convicted of murder on the high seas, being brought from Newgate on February 4th of that year, and conveyed in solemn procession to Execution Dock, there to receive the punishment awarded by law. They were



preceded to the place of execution by the Deputy Marshal of the Admiralty bearing the Silver Oar.

The Silver Oar was also used by the officers of the Admiralty in making arrests, or in seizing goods; in fact, on all occasions when the jurisdiction of the Admiralty was exercised. It should not be forgotten that there being no distinctive dress for the officers of the Admiralty, any more than there was, or now is, for parish constables, bailiffs, justices of the peace, or coroners, it was necessary that certain *insignia* of office should be produced, such as the Silver Oar by sea, or the constable's staff by land. This gave rise to the use of the Silver Oar. In the illustration before us, Fig. 1 is a reduced representation of the Oar now used in the Admiralty Division of the High Court of Justice of England. Its length is 2 ft. 9 in., the stem or loam being 1 ft. 9 in. Fig. 2 is a larger drawing of the blade, the uppermost part of which is an heraldic shield bearing the Royal Arms, France and England, quarterly, having for supporters a dragon and a greyhound rampant, which were the Arms and Supporters of Henry VII.

The Royal Arms are surmounted by a high arched crown, the middle arch of which has been broken away, and a more modern crown has been engraved in the vacant space. Below are the Arms of William, Duke of Clarence (afterwards William IV.),\* who was Lord High Admiral in 1827. Fig. 3 is an illustration of the stem. It is of the same size as the drawing, and declares itself to have belonged to Jasper Swift, who was Marshal or Serjeant of the High Court of Admiralty (1585) in the reign of Elizabeth. As to the date of the Silver Oar:—On various parts, with the exception of its blade, are the London Hall-marks for 1798-9, and the initials of silversmiths, W. P. and J. P. (William

\* Mr. W. H. St. John Hope, writing to the *Times* (June 22nd, 1897), thinks that they are the Arms of James, Duke of York, and that the date of the blade is *circa* 1660.

Pitts and Joseph Preedy). The raised anchor on the blade is of the same date, but the blade is undoubtedly older. Mr. W. Rolfe, the Marshal of the Admiralty's Offices, is of opinion that some portions of this Oar date from the reign of Henry VII., and in this opinion we fully concur; possibly they existed much earlier, but unfortunately there are no Hall-marks to shew us. It is clear, however, that portions of an existing Oar, with a good deal of new material, were put together in 1798-9 by the above-named smiths, and form the Oar as we now have it; but it is equally certain that one portion of it, at least, existed in 1585, when it was borne by Jasper Swift, the Marshal of the Admiralty.

THE EDITOR.

## II.—ESTATES PUR AUTRE VIE.

THIS "lowest estate of freehold" has in one or two recently reported cases—one of them in the House of Lords—occupied the attention of the judicature. The result of the decisions is to demonstrate that in a contest between the heir and the personal representative of tenant *pur autre vie* in the absence of a valid disposition, (as to which, *vide* Co., Litt. 41b) by the tenant in favour of the heir—a disposition, which if *non sui juris*, e.g., an infant, he of course cannot make—or if there being no limitation in the heir's favour in the instrument creating the tenancy (as there was in *Philpotts v. James*, 3 Doug. 425)—the title of the heir of the tenant *pur autre vie* will be invalid as against that of the executor or administrator.

The Statute of Frauds, abolished "general occupancy"—that "scramble for the occupancy after the death of the first taker," as Mr. Justice Fry is reported to have termed it in *In re Barber's Settled Estates* (18 Ch. Div. 624, at

p. 627). The first person who entered could, in the case of freeholds or leaseholds not limited to the heirs or personal representatives respectively of the tenant *pur autre vie*, hold as general occupant, except as against the Crown. The decision of Vice-Chancellor Kindersley in *Northern v. Carnegie* (4 Drew. 587) settled that as an executor may be special occupant of a *corporeal* hereditament, so he may be special occupant of an incorporeal hereditament. And there may be a special occupant of a trust or copyhold estate. (Lewin on Trusts, 574, 6th Edition; Tudor Real Prop. Cas. 45, 1st Edition.)

The following passage from the judgment of Mr. Justice Fry in *In re Barber's Settled Estates* (*sup.*) points out the anomalous nature of the estate *pur autre vie*. "When an estate *pur autre vie* is given to a man or to him and his heirs, the most he can take is an estate for his own life, and anyone who comes in after him takes, not through him, but as occupant, of the estate. Originally anyone who pleased was allowed to scramble for the occupancy after the death of the first taker, but this was found to be so inconvenient that he was allowed to appoint by will a special occupant. But still everyone who came in after the first taker came in as an occupant, and not as deriving title through him. Such a mode of devolution is very different from that of an estate in fee simple. But still, for the sake of convenience, the Legislature and the Courts have enforced an analogy between these estates *pur autre vie* and estates in fee simple, and have given effect to it with regard both to the capacity and the incapacity of alienation by the first taker. With regard to the power of disposition by the first taker, there is no doubt a material difference between an estate *pur autre vie* and an estate in fee simple, because the first taker of an estate *pur autre vie* has the whole estate in him, and it might have been supposed that he could dispose of the whole. But,

nevertheless, his power of disposition has been limited. By what? By the regard paid to the intention expressed by the settlor or donor, that a particular person shall be the special occupant after the first taker." And the learned Judge proceeded to remark that a series of decisions have permitted the creation of successive limitations of an estate *pur autre vie*—*quasi* estates for life, *quasi* estates in tail, *quasi* estates in fee in remainder, and *quasi* executory devises over, and goes on to notice the power of alienation attaching to such estates, holding that an executory devise of an estate *pur autre vie* could not be defeated by the prior tenant *pur autre vie* upon the principle laid down by Lord St. Leonards in *Allen v. Allen* (2 D. & Warr. 307) that the analogy with fee simple estates ought to be supported (at pp. 627, 628).

Lord Chancellor Brady, also in *Brenan v. Boyne* (16 Ir. Ch. R. 87, at pp. 94, 95), is reported to have said: "As regards such estates, however they may be limited, whether to A simply or to A and his assigns, or to A and his heirs, or to A and his executors or administrators, A has the whole dominion of such estate during his life, and may dispose of it to whom and in what manner he pleases. At the common law he could do this by deed; and by the Statute of Frauds, prior to the late Wills Act, and since by the third section of that Act, he can do so by devise. In exercising this power, he may change as he pleases the limitations of the tenure. Even though his own grant be to his heirs and assigns, he can convey the estate to a grantee singly, by name without more, or he may convey to the grantee, his heirs and assigns, or to the grantee, his executors and administrators, thus changing the whole character of the estate, and converting the freehold into personalty." Later on, at p. 95, referring to the doctrine of special occupancy, he says:—"According to this doctrine, when an estate is given to A and his heirs for the life of

B, the heirs of the grantee are considered to be special occupants, who will succeed to the estate, *per formam doni*, on his death, not, strictly speaking, as deriving the estate through him, as in the case of a fee-simple, but as succeeding to the occupancy thereof to the exclusion of any general claimants. Their estate may be in some sense treated as a remainder, but it is defeasible by the grant or devise of the tenant, as in the case of a fee-simple."

The power of alienation of the owner of a *quasi* estate tail and the difference between the nature of that estate and the fee-simple conditional is noticed in Lewin on Trusts (*sup.*). Further, it should be added that the only application of the title of "occupancy" in the law of real property is to be found in connection with this kind of estate, and that by sect. 58 (vi.) of the Settled Land Act, 1882, a tenant "for any other life" when his interest is in possession (*Re Edwards' Settlement*, 76 L.T. Rep. 774) has the powers of a tenant for life under the Settled Land Acts (*et vide* sect. 30 (1) of the C. & L.P. Act, 1881).

The nature and incidents of the estate *pur autre vie* having been thus referred to, it remains to notice some of the decisions bearing upon the special subject of these remarks, viz., the devolution of the undisposed of interest of the first taker. The words of the 6th section of the Wills Act, 1837, are "that in case there shall be no special occupant of any estate *pur autre vie* . . . it shall go to the executor or administrator of the party that had the estate thereof by virtue of the grant."

In the recent case of *Mountcashell v. More-Smyth* (1896), A.C. 158, the peculiarity, according at any rate to one construction of the documents upon which the case arose, was that while the legal estate was vested in the two trustees and their heirs, there were no words of limitation in the case of the equitable interest of the infant tenant *pur autre vie*. It was contended on behalf of his heir-at-law that by

a kind of attraction the devolution of the equitable estate, which on account of his infancy he could not alter, followed the limitation of the legal estate and passed to the grandfather as heir to the deceased infant. The House of Lords, affirming the Court of Appeal in Ireland (1895, Ir. Ch. 44), held the personal representative entitled under sect. 6, Lord Davey laying down that it was for those who say that an estate *pur autre vie* ought to go to the heir to shew some further intention to throw it upon a special occupant. Further holding that if it is to go to the heir in any deed at all events the word "heir" must be used for the purpose of designating the special occupant. This was a case arising under agreements and conveyances *inter vivos*, but Mr. Justice Romer in the more recent case of *In re Sheppard; Sheppard v. Manning* (66 L.J. Ch. 445), the case of a disposition by will of an owner of an estate in fee-simple,—and so distinguishable from Lord St. Leonards' decision in *Wall v. Byrne* (2 Jo. & Lat. 118), a case where the testator was lessee of lands demised to him, his heirs and assigns *pur autre vie*,—the heir neither having been mentioned in the devise before him, nor it being otherwise shewn that the heir was intended to take, held the personal representative of the tenant *pur autre vie* entitled (*cf. Doe d. Lewis v. Lewis*, 9 M. & W. 662).

The above decisions appear to have driven one more nail into the coffin of the heir whose condition in view of recent legislative and judicial activity seems to be growing more and more precarious.

W. P. PAIN.

### III.—THE PUNISHMENT OF CRIME UNDER THE ROMAN EMPIRE.

IT is proposed in the present article to discuss the subject of criminal punishment under the Roman Empire, a subject which, though unattractive, can scarcely fail to be interesting at the close of a century that has witnessed so many important reforms in our own system of penal law—reforms that have saved our criminal jurisprudence from the reproach of being a disgrace to a civilized country, but that have, nevertheless, been doomed in a large measure to disappoint the hopes of their authors, and to open a fresh series of problems unforeseen by those who first conceived them. The penal system of the Roman Empire has had scarcely any perceptible effect upon our own system of punishments, and very little upon those of other countries; it was, on the whole, considerably more humane than that prevailing in England at the commencement of the nineteenth century, the proportion between crime and penalty was more justly fixed, and the law was animated by a more rational and equitable spirit. This we hope to make appear in due course. The subject of punishment is principally discussed in Dig. 48, 19, *de pœnis*; 48, 20, *de bonis damnatorum*; and 48, 22, *de interdictis, et relegatis, et deportatis*; also in Cod. 9, 47, *de pœnis*, and 9, 49, *de bonis proscriptorum seu damnatorum*. The most important and comprehensive title is D. 48, 19, which contains a general survey of the system of punishment under the Roman Empire.

Punishments were divided by the Roman jurists into *capital* and *non-capital*; *caput* is said by Dr. Moyle to mean “the rights a man enjoys in virtue of being free, or a *civis*, or a member of a family;” consequently a defendant was

said to suffer capital punishment where he lost his life, or his liberty, or where he ceased to be a citizen of Rome; "*rei capitalis damnatum sic accipere debemus, ex qua causa damnato vel mors, vel etiam civitatis amissio, vel servitus contingit.*"\* (D. 48, 19, 2, pr. & v. 11, § 3, ejus. tit., where the phrase "*capitis pœna*" seems to be used in a modern sense.)

CAPITAL PUNISHMENTS; the principal capital penalties were:—(1.) *Death*; the extreme penalty of the law (*summum* or *ultimum supplicium*) was commonly inflicted upon those found guilty of the graver offences, sometimes, as in the case of homicide, upon persons of low degree (*humiliores*) only, sometimes upon all offenders alike, as in cases of treason and parricide. Death was inflicted (*a*) by decapitation with the sword (*capitis amputatio*, D. 48, 19, 28, pr.), as was the practice in France before the Revolution; "*vita adimitur, ut puta si damnatur aliquis, ut gladio in eum animadvertatur.*" (D. 48, 19, 8, § 1.) Beheading with the sword seems to have been confined to persons of free birth; *v.* an enactment of Constantine (in C. 9, 20, 16), relating to the crime of kidnapping, "*servus quidem vel libertate donatus bestiis subjiciatur, ingenuus autem gladio consumatur.*"†

(*b*) By burning alive: "*vivi crematio*" (D. 48, 19, 28, pr.); this penalty was inflicted, *e.g.*, upon deserters (*transfugæ*) and those who betrayed the secret councils of the Emperor (D. 48, 19, 8, § 2; 38, § 1); also upon slaves found guilty of plotting against the lives of their masters (D. 48, 19, 28, § 11). In English law, before the statute 30 Geo. III., c. 48,

\* Loss of freedom was said to involve a *capitis deminutio maxima*, loss of civitas a *capitis deminutio minor sive media*. (Inst. 1, 16, 1-2.)

† The reader may remember Earl Ferrer's petition to Geo. II. that he might be beheaded, rather than hanged; "this was refused. 'He has done,' said the old King, 'de deed of de bad man, and he shall die de death of de bad man.'" (Timb's Romance of London.)



a female servant, who murdered her master or mistress, was burnt to death, as guilty of petit treason. (Blackstone, Comm. IV., ch. 14.) Arson, within a town, was sometimes punished with death by burning (D. 48, 19, 28, § 12). Incendiaries seem to have been burnt under a provision of the Twelve Tables (Gibbon, Decline and Fall, ch. 44), and *v.* the cruelties inflicted by Nero upon the Christians for their supposed share in the great fire of Rome. Coiners and utterers of counterfeit coin were burnt, their crime being a species of treason (C. 9, 24, 2). In English law various offences against the coinage amounted to high treason, under the Statute of Treasons of Edw. III. and other enactments, and were consequently, if committed by a female, punished by burning to death.\* (Blackstone, Comm. IV., ch. 6.) (c) Hanging (*ad furcam damnatio*) was sometimes inflicted (D. 48, 19, 28, *pr.*), *e.g.*, on deserters to the enemy, and authors of riot and sedition. (D. 48, 19, 38, §§ 1-2.) It appears to have been the usual punishment for treason in the regal period, and under the law of the Twelve Tables. (Gibbon, Decline and Fall, ch. 44, and *v.* the description of the proceedings against Horatius in Livy, 1-26, "*lex horrendi carminis erat: duumviri perduellionem iudicent: si a duumviris provocarit, provocatione certato: si vincent, caput obnubito, infelici arbore reste suspendito, verberato vel intra pomerium vel extra pomerium.*")

We may also mention (d) exposure to wild beasts in the arena (*e.g.*, for homicide, D. 48, 8, 3, § 5; for brigandage, D. 48, 19, 28, § 15; for manstealing, C. 9, 20, 16), and (e) crucifixion; this barbarous punishment was confined to slaves and provincials, and the murder of a Roman citizen

\* This punishment seems to have been inflicted down to comparatively modern times: Macaulay says, speaking of the state of England in 1685, "A woman burned for coining excited less sympathy than is now felt for a galled horse or an overdriven ox." (*Hist. of Eng.*, ch. 3.)

by crucifixion was one of the charges brought against Verres by Cicero. But it seems that persons of humble rank might be crucified for forgery (Paul. sent. rec. 5, 25, 1, cited by Dr. Moyle, Just. Inst., vol. 1), and for kidnapping (Ulpian, collatio 14, cited by Moyle, *ibid.*). "The piety, rather than the humanity, of Constantine, soon abolished in his dominions the punishment which the Saviour of mankind had condescended to suffer." (Gibbon, Decline and Fall, ch. 20.)

(2.) The capital punishment ranking next after death was servitude; "est pœna, quæ adimat libertatem, hujusmodi, utputa si quis in metallum vel in opus metalli damnetur." (D. 48, 19, 8, § 4.) Sentence for life to the mines, *in metallum*, to work in the mines, *in opus metalli* (the distinction between which consisted merely in the weight of the chains worn), or to hunt wild beasts in the arena, *in ludum venatorium*, involved a *capitis deminutio maxima*, the criminal losing the status of a free man, and becoming what was known as a *servus pœnæ*. (D. 48, 19, 8, §§ 6, 11, 12, 17, pr. "Some are slaves of punishment, such as those sent to the mines, or to work in the mines, and if anything has been given them by will, the bequest is void, it being given, as it were, to the slave of punishment, and not to the slave of the Emperor.") The penalty of "*ministerium metallicorum*" is also mentioned, as involving servitude (D. 48, 19, 8, § 8-36); it is not easy to say wherein it differed from "*opus metalli*"; that it did differ may be inferred from a constitution of Alexander, in C. 9, 47, 9, "apparebit, eam non oportuisse in *ministerium metallicorum*, nec in *opus metalli* dari." Criminals might also be condemned to work in salt pits and in chalk or sulphur pits. (D. 48, 19, 8, §§ 8 and 10.) Justinian abolished penal servitude. (Moyle, Just. Inst., 1, Nov. 22, 8, "non enim liberam conditionem in servilem statum mutamus, qui, ut eorum, qui antea servi fuerunt, manumissores essemus, operam dedimus.")

Dr. Moyle is of opinion that sentence to death gave the criminal the status of a slave, and this view is borne out by the passage (Inst. 1, 12, 3) cited by him; "*servi autem poenæ efficiuntur, qui in metallum damnantur et qui bestiis subiciuntur.*" So in English law, sentence of death was formerly followed by attainder; "for when it is now clear beyond all dispute, that the criminal is no longer fit to live upon the earth, but is to be exterminated as a monster and a bane to human society, the law sets a note of infamy upon him, puts him out of its protection, and takes no further care of him than barely to see him executed. He is then called attainder, *attinctus*, stained or blackened. He is no longer of any credit or reputation; he cannot be a witness in any court; neither is he capable of performing the functions of another man: for, by an anticipation of his punishment, he is already dead in law." (Blackstone, Comm. IV., ch. 29.)

Even at the present day it would seem that sentence of death makes the criminal *civiliter mortuus* for certain purposes; witness the ineffectual attempts made in 1896 to serve the notorious Mrs. Dyer with a subpœna.

(3.) Next after servitude came *civitatis amissio*; this resulted (a) from deportation for life to an island, (Inst. 1, 16, 2; D. 48, 19, 28, pr. 48, 22, 18, § 1) which was substituted for the ancient "*aquæ et ignis interdictio*" (D. 48, 19, 2, § 1); (b) from sentence to hard labour for life on the public works, *in opus publicum*. (D. 48, 19, 17, § 1.)

NON-CAPITAL PUNISHMENTS; non-capital punishments were infinite in number and various in degree; some of the principal ones may be briefly noticed: (1.) *Relegatio*; i.e., banishment not involving a *capitis deminutio*. (D. 48, 1, 2, where Paul says that the term *exsilium*, as descriptive of relegation, is incorrect, "*tunc enim civitas retinetur.*" D. 48, 22, 4. "Those relegated to an island retain their children in their power, because they retain all their other

rights as well, for they are merely forbidden to leave the island.") Relegation might be either temporary or perpetual, (D. 48, 19, 28, § 1; 48, 22, 7, § 2) and might consist (a) of *interdictio locorum*, (b) of banishment to an island. (D. 48, 22, 5, 7 pr.) Relegation did not, like deportation and other capital punishments, involve forfeiture of property, but a person sentenced to relegation *in perpetuum*, might be sentenced to forfeit part of his estate. (D. 48, 22, 4, 7, § 4, 14, § 1, "nam deportatio civitatem et bona adimit, relegatio neutrum tollit, nisi specialiter bona publicentur.")

(2.) Sentence to temporary hard labour in the mines or on the public works. (D. 48, 19, 8, § 8, 17, § 1, 28, § 6.)

(3.) Flogging; "veluti fustium admonitio, flagellorum castigatio, vinculorum verberatio." (D. 48, 19, 7.) Flogging to death was illegal. (D. 48, 19, 8, § 3.)

(4.) Debarring from the practice of the law; the governors of provinces were in the habit of exercising a disciplinary control over legal practitioners similar to that exercised by the Courts of to-day over solicitors.

A man might be debarred (a) from appearing in the Courts as an advocate, *interdictio advocationibus*, (b) from legal practice generally, *interdictio foro*; "plus est autem foro, quam advocationibus interdicere, si quidem huic omnino forensibus negotiis accommodare se non permittitur. Solet autem ita vel juris studiosis interdici, vel advocatis, vel tabellionibus sive pragmaticis." (D. 48, 19, 9, pr.—4.)

Some miscellaneous points in connection with the punishment of crime may here be noticed.

*Infamia* was the result of condemnation for a capital offence in a *judicium publicum*, and also of sentence for certain other offences, such as theft, or *injuria*. (D. 48, 1, 7.) It involved what was known as a *minutio existimationis*, *existimatio* being defined by Dr. Moyle as a certain dignity which every Roman citizen possessed in virtue of his citizenship, but which was capable of total or partial

destruction. It followed that when capital sentence was imposed, the *infamia* resulting therefrom could not operate upon the *existimatio*, which was destroyed along with the *civitas* upon which it depended. *Infamia* formerly involved various disabilities, but in the reign of Justinian "most of these consequences were inoperative or obsolete." (*v. Moyle, Just. Inst., vol. I.*)

The nature of the criminal's punishment was determined by his rank or position; it would seem that the more infamous and degrading penalties could only be inflicted upon slaves, and those who were not citizens of Rome. In the oration against Verres already referred to, Cicero says, "Shall an inferior magistrate, a governor who holds his whole power of the Roman people, in a Roman province, within sight of Italy, bind, scourge, torture with fire and red-hot plates of iron, and at the last put to the infamous death of the cross, a Roman citizen?" (Whitworth's transl.) We may also refer to the passage in the Acts (xvi., 37-38), where St. Paul animadverts upon the illegal punishment of scourging, inflicted upon him, a Roman citizen.

At a later period we find all subjects of the Empire Roman citizens (under the edict of Caracalla), but a broad distinction drawn between persons of rank (*honestiores*), and persons of low degree (*humiliores*); the more infamous punishments, as well as the punishment of death (except in certain cases), were confined to slaves, freedmen, "*humiliores*," and "*famosi*" (*i.e.*, persons branded with *infamia*, *v. D. 48, 19, 28, § 16*).

It appears from *D. 48, 19, 10 pr.* that there were some slight variations between the punishments inflicted upon free men of humble rank, and upon slaves, respectively; "*in servorum persona ita observatur, ut exemplo humiliorum puniantur. Et ex quibus causis liber fustibus cæditur, ex his servus flagellis cædi, et domino reddi jubetur, et ex*

quibus liber fustibus cæsus in opus publicum damnatur, ex his servus sub pœna vinculorum ad ejus temporis spatium, flagellis cæsus, domino reddi jubetur."

A few examples may serve to illustrate the relative positions of the different classes with reference to criminal punishment :

*Sedition* ; "auctores seditionis . . . pro qualitate dignitatis aut in furcam tolluntur, aut bestiis objiciantur, aut in insulam deportantur." (D. 48, 19, 38, § 2.)

*Homicide* ; "humiliores enim solent vel bestiis subjici, altiores vero deportantur in insulam." (D. 48, 8, 3, § 5.)

*Seduction* ; "pœnam autem eadem lex\* irrogat peccatoribus, si honesti sunt, publicationem partis dimidiæ bonorum, si humiles, corporis coercionem cum relegatione." (Inst. 4, 18, 4.)

*Forgery* ; "ejusque legist† pœna in servos ultimum supplicium est, quod et in lege de sicariis et veneficis servatur, in liberos vero deportatio." (Inst. 4, 18, 7.)

The defendant's punishment was determined by his condition at the time of committing the offence ; accordingly if a slave committed a crime, and before receiving sentence was manumitted, he suffered the punishment of a slave. (D. 48, 19, 1, pr. 2.)

If a woman who had been convicted and sentenced was *enceinte*, execution of her sentence was postponed until her delivery. (D. 48, 19, 3.) In English law, if a woman capitally convicted pleads pregnancy, she may be reprieved *ex necessitate legis*, for "though this is no cause to stay the judgment, yet it is to respite the execution till she be delivered." (Blackstone, Comm. IV., ch. 31.)

Those who returned from exile or broke prison were punished with additional severity, e.g., a person sentenced to relegation to an island, who escaped, was sentenced to

\* Lex Julia de adulteriis et stupro.

† Lex Cornelia de falsis.

deportation, while a criminal who escaped from deportation was put to death. (D. 48, 19, 28, §§ 13-14.) To return from transportation was formerly a capital felony. (Blackstone, Comm. IV., ch. 10.) Previous convictions appear to have been taken into account. (D. 48, 19, 28, § 3, riotous behaviour in cities.)

Prisoners condemned to the mines might be released on the ground of age or infirmity, "*si modo vel cognatos, vel affines habeant, et non minus decem annis pœna sua functi fuerint.*" (D. 48, 19, 22.) "In interpreting the laws, penalties are to be modified rather than aggravated." (D. 48, 19, 42.) This rule recalls the canon of English law requiring a strict construction to be put upon penal statutes, and the humane interpretation which the Rabbis put upon the rigorous enactments of the Mosaic Code.

Under an enactment of Constantine, a criminal sentenced to the mines was not to be branded on the face, "for the face, which is fashioned after the likeness of celestial beauty, is not to be disfigured." (C. 9, 47, 17.) A person sentenced to hard labour was to do the work of his own trade (constitution of Valentinian, Valens and Gratian in C. 9, 47, 19); this, at least, appears to be the meaning of "*ne quis pro coercitione delicti vel pistoribus, vel cuicunque alteri corpori, quum alterius sit corporis, addicatur.*" This humane and rational provision is not adopted in England.

Notorious robbers were to be gibbeted on the spot where they had committed their crimes, "in order that the sight may deter others from the same misdeeds, and that the penalty, inflicted on the very spot where they committed their murders, may console the relatives of the deceased." (D. 48, 19, 28, § 15.) For the corresponding provisions of English law as to hanging in chains, v. Blackstone. (Comm. IV., ch. 14).

The bodies of those who had been put to death, or who had died in exile, were, at the request of their relatives or

friends, handed over for burial. "This practice," says Ulpian, "the Emperor Augustus (in Book X. *de vita sua*) writes that he observed." (D. 48, 24, *de cadaveribus punitorum*.) This concession was not made in certain cases, e.g., in cases of high treason. Cp. with the subject of this title, St. Matth. xxvii., 57-8.

In England the bodies of executed murderers were formerly ordered to be dissected and anatomized (under statutes 25 Geo. II., c. 37, and 9 Geo. IV., c. 31, and v. Blackstone, Comm. IV., ch. 14).

JURISDICTION ; a few remarks on the subject of jurisdiction may not be out of place ; the more important criminal jurisdiction appears to have been exercised by the prefects ; the presidents of provinces had no power to sentence to deportation\* (D. 48, 19, 2, § 1), nor to the mines (D. 48, 19, 8, § 5), nor to fight with wild beasts. (D. 48, 19, 31, pr. "sed si ejus roboris vel artificii sint, ut digne populo Romano exhiberi possint, principem consulere debet.")

These passages might almost lead us to infer that capital cases were withdrawn from the cognizance of the præses. Reference may also be made to a constitution of Theodosius and Valentinian (in C. 9, 48) forbidding any judges, except those "qui in summa administrationis sunt positi potestate," to sentence to confiscation *totius substantiæ* without the leave of the emperor.

The consuls could not impose sentence of relegation (D. 48, 22, 14, § 2), "relegatur quis a principe, senatu, præfectis, et præsidibus provinciarum, non a consulibus."

Having discussed the question of jurisdiction *ratione materiæ*, the question, that is, "as to the proper court, within a given territory,"† for the trial of a case, we will

\* But the præses might obtain the imperial ratification of sentence of deportation. (D. 48, 22, 6, § 1.) Where the sentence was not ratified, the status and "testamentifacio" of the criminal were unimpaired. (D. 48, 22, 15, § 1.)

† Holland, Elements of Jurisprudence.



now proceed to consider the question of *forum*, i.e., the question as to the proper court in which, *ratione territorii*,\* proceedings may be commenced.

The following appear, from D. 48, 22, 7, §§ 10-13, to have been the competent "fora" in criminal cases:—(1) The *forum domicilii*; this is apparent from the following passage: "Interdicere autem quisea provincia potest, quam regit, alia non potest; et ita divi Fratres rescripserunt. Unde eveniebat, ut qui relegatus esset ab ea provincia, in qua domicilium habuit, morari apud originem suam posset." Ulpian goes on to say that an imperial constitution permitted the judge of the *forum domicilii* to interdict not only the province over which he had jurisdiction, but also the province of the defendant's origin, and that the same privilege belonged to the judge of (2) the *forum delicti commissi*; "sed et eos, qui, quum incolæ non essent, in ea provincia quid admiscent, æquum est ad rescripti auctoritatem pertinere," which clearly shews that a criminal could be tried in the territory where he committed the crime. And again, we read, "si quis eam sententiam admiscent, ut is, qui in alia provincia commisit, possit relegari ab eo, qui ei provinciæ præest, &c."

Reference may also be made to a constitution of Gordian (C. 9, 9, 14), "si, dum in tuo matrimonio uxor tua esset, se adulterio polluit, in ea provincia, in qua id ipsum factum est adulterium, more solito persequi debes." All these passages prove that the *forum delicti commissi* had concurrent jurisdiction with the *forum domicilii* in criminal cases.

(3.) The *forum originis*;† "per contrarium autem is, qui originis provinciæ præest, non est nactus jus interdicendi ea provincia, quam incolit is, qui relegatur." We may infer

\* Professor Holland prefers this phrase to *ratione personæ*.

† I venture to use this phrase to indicate the court of the territory where the defendant was born, though I am not aware that it is sanctioned by any authority.

from this passage that the *forum originis*, i.e. the court of the territory in which the defendant had his origin, had jurisdiction in criminal cases, though the judge could interdict no province but his own.

(4.) In cases of rape the *forum deprehensionis*, i.e., the court of the territory where the defendant was arrested, had jurisdiction. (C. 9, 13, 1, pr., where we read that no plea to the jurisdiction [*præscriptio fori*] was to be admitted, implying that the *forum deprehensionis* was not, in ordinary cases, the appropriate tribunal.)

In connection with the "fora" *delicti commissi* and *originis* we may note that Pilate seems to have remitted Christ to the tribunal of Herod, under the impression that as He was a reputed Galilean, Herod, as judge of the *forum originis*, had concurrent jurisdiction with himself, the judge of the *forum delicti commissi*. As the offences charged were alleged to have been committed in Galilee, as well as in Judæa, Herod, as well as Pilate, would have had jurisdiction as judge of the *forum delicti commissi*. (V. St. Luke xxiii., 5-7.)

T. W. MARSHALL.

#### IV.—A CHARGE GIVEN BY SIR LEOLINE JENKINS AT A SESSION OF ADMIRALTY WITHIN THE CINQUE PORTS.

(EDITED BY SIR SHERSTON BAKER, BART.)

THE following Charge was delivered by Sir Leoline Jenkins on December 2nd, 1668, to the Grand Jury, on the occasion of his holding an Admiralty Session for the Cinque Ports. Many local courts, such as Newcastle, Tynemouth, King's Lynn, Rochester, Colchester, Harwich, Southampton, Bristol, Dartmouth and several others claimed to be exempt from the jurisdiction of the Lord

High Admiral of England, but the most important of these courts was that of the Cinque Ports, a court which even now exists, although in a very modified form. This court presents the type of all our Admiralty and Maritime courts. The liberties of the Cinque Ports were carefully preserved by their charters, and among the most important of these liberties were the right of holding Pleas, and the right of wreck, both granted to them by Edward I. Although their charters do not express exemption in terms, it seems that they derived an exemption from the Lord High Admiral of England from the general words of their charters.\* In 1411 at an inquisition of the Cinque Ports the jurors presented John Bermyncham, Deputy of the Lord High Admiral of England for entering the jurisdiction of the Cinque Ports near Rye, and seizing a vessel as a droit of Admiralty, in contempt of the Lord High Admiral of the Cinque Ports. And in 1543, the jury presented the Bailiff of Dover for executing process of the Courts of Westminster, within the Cinque Ports. At an inquisition held at Hastings on the 15th June, 1526, the limits of the Cinque

\* The Cinque Ports had certain franchises to hold pleas, etc., and the king's writs did not run there; but by the 18 and 19 Vict., cap. 48, the jurisdiction of the Lord Warden of the Cinque Ports in civil proceedings is abolished, and all writs and judgments may be directed to be executed in the Cinque Ports in the same manner as in other parts of the realm. The jurisdiction, however, of the Lord Warden and his officers relating to salvage, and the jurisdiction of the Court of Admiralty of the Cinque Ports, and the right of the Lord Warden with respect to flotsam, jetsam, and lagon, continue. By 27 and 28 Vict., c. 80, the Criminal Justice Act, 1855, is extended to the Cinque Ports. The constable of Dover Castle is the Lord Warden of the Cinque Ports. There are several courts within the Cinque Ports: one before the constable; others within the ports themselves, before the mayors and jurats; another, the Lord Warden's Court of Appeal from the Courts of the Cinque Ports, which was called *curia quinque portuum apud Shepway*; likewise a Court of Chancery, for matters of Equity. The Lord Warden's Court of Appeal has fallen into desuetude, and so are the other Courts. Commissioners sometimes act in salvage cases, and the appointment of these is the only remaining act done by the Lord Warden in his capacity of Admiral.

Ports are set out; they extended from the Horseshoe (Shoeburyness) in Essex to Beauchief (Fairlight) in Sussex, and up the estuary of the Thames to Shellness (Sheerness), in the Isle of Sheppey.\*

The Charge is as follows :—" Gentlemen of the Jury, you are here impannelled and sworn to make a diligent Enquiry, and a true Presentment of all crimes, offences, and abuses, that have been already committed, or are now prevailing within the Jurisdiction of the Admiralty of the Cinque Ports.†

" 'Tis not my Business now to shew you how ancient this Admiralty is in story; nor to trace it up to William the

\* By the 48 George III., cap. 130, passed A.D. 1808, the boundaries of the jurisdiction of the Lord Warden of the Cinque Ports, in regard to any matter or thing contained in this Act, are deemed to be as follows:—From a point to the westward of Seaford, in the county of Sussex, called Red Cliff, including the same, thence passing in a line one mile without the sand or shoal called the Horse of Willingdon, and continuing the same distance without the Ridge and New Shoals, and thence in a line within five miles of Cape Crizries, on the coast of France; then round the shoal called the Overfalls, two miles distant from the same; thence in a line without, and the same distance along the eastern side of the Galloper Sand, until the north end thereof bears west-north-west, true bearing. From the west-north-west bearing of the Galloper, it runs in a direct line across the shoal called the Thwart Middle, till it reaches the shore underneath the Maze Tower; from thence, following the line of the shore up to Saint Osyth, in the county of Essex, and following the course of the shore up the River Colne to the landing place nearest Brightlingsea; from thence in a direct line to Shoe Beacon; from thence to the point of Shellness, on the Isle of Sheppey, and from thence across the waters to Faversham, and from thence following the line of coast round the North and South Forelands, and Beachy Head, till it reaches the said Red Cliff; including all the waters, creeks, and havens, comprehended between them.

† The five, or Cinque Ports, are Dover, Sandwich, Romney, Hythe and Hastings; Winchelsea and Rye were added as members. There are also several towns adjoining that have the privileges of the ports, and of which they are limbs. To Hastings appertain Seaford, Pevensey, Bulvarhithe, Hydney, Tham, Beaksborne, Greenwich, and Northye; to Dover appertain Folkestone, Faversham and Margate; to Sandwich appertain Fordwich, Reculvers, Sarre, Storrey, and Deal; to Hythe appertains Westhithe; to New Romney appertain Promhill, Lydd, Oswaldstone, Dungeness, and Old Romney.

Conqueror, or Edward the Confessor's Time : The Records of the Tower of London do fully vouch the Antiquity of it, and by them it appears, that when there were several Admirals in England (as about 400 years ago there were always two or three at a time), the Admiral of the Cinque Ports was still one, if not the chiefest, of them. And those great Fleets which these Ports did then furnish out \* upon all occasions (called and reputed by way of pre-eminence the King's Navies Royal) were still commanded by the Lord Warden as their Admiral ; and he had all the authorities, rights, and royalties, belonging to an Admiral, annexed to his Office, as appears by the Commissions of Beauchamp and Herle, who were Wardens and Admirals of these Ports in Edward III.'s Time.

"Nor are there the Records of the Tower only, but several Acts of Parliament, that declare this Admiralty to be an ancient entire Thing of itself, distinct from that ancient great one, commonly called the Admiralty of England : for instance, in the Statute of 2 Henry V.† and 28 Henry VIII. where the proceedings of the Lord High Admiral of England, in cases of Treason and Felony, are directed to be by a Jury of twelve men, according to the course of the Common Law, there the Cinque Ports have their Admiralty jurisdiction, and the cognizance of such causes entirely reserved to them, as distinct and independent from the Lord High Admiral's jurisdiction.

\* Hastings (with Winchelsea and Rye) supplied 21 ships ; Dover, 21 ships ; Hythe, 5 ships ; Romney, 5 ships ; Sandwich, 5 ships. In all 57 ships, manned by 1,140 men and 57 boys.

† This statute only applies to treasons and offences done against truces and safe-conducts upon the main sea, out of the body of counties, which are to be tried by the Maritime Law ; but the process is to be by jury and indictment, according to the law of the land, not by the Admiral as Sir Leoline Jenkins declares, but by Conservators of truces. It is the latter statute (28 Hen. VIII.) which directs all serious offences upon the sea to be tried by the course of the Common Law, by Commissioners.

“ Before I come to the particulars of your charge ; it will not be amiss to lay out the true bounds within which you are to limit your Enquiries, that you may not encroach upon the Charge of Juries and Inquests within the Land. You are therefore to enquire no further than within the Jurisdiction of the Admiralty of these Cinque Ports, and his Jurisdiction is not only upon the main sea within your franchises, but also in all the ports, havens, and creeks, and in the main streams of great Rivers, beneath the first Bridges, as also everywhere upon the Sea-shore within High-water Mark.\* Thus much the Statute of 28 Henry VIII. compared with the forms of commissions of Oyer and Terminer for the Admiralty, does very fully import. And their commissions are the best comment upon that Statute, being not only issued out in virtue of it, but still passing the view and approbation of every Lord Chancellor since the making of that Statute.

“ These are your bounds, Gentlemen ; the particulars you are to enquire of, I shall deduce from these three heads. The Laws of the Realm, the Laws of Oleron, and the Laws of the Admiralty.

“ First, as to most of those crimes and offences that are enquirable, by the Laws of the Realm, I shall not need to say any more, but that whatsoever is Treason or Felony, Murder or Manslaughter, Mayhem, Riot, Larceny, or Misdemeanor upon the main Land, within the Body of any County, the same changes not its nature, name or punishment when 'tis committed upon the sea, within the jurisdiction of the Admiral.

“ For instance, 'tis no less High Treason treacherously to deliver up one of His Majesty's ships to an enemy, than

\* But the body of the realm and of every county are places *accidentally* subject to the Admiralty Therefore, the Admiral may take the body in execution upon the land.

to betray one of his castles or garrisons; and he that gives the King's enemies any intelligence, aid, or relief at Sea, is as perfectly a traitor, and as fully within the purview of the Statute of 25 Edward III. as if he had done it upon the Land.

"You are here to enquire within the jurisdiction of this Admiralty, of all Treasons and Conspiracies against the King, for to compass, imagine, or devise the death of the King, or any bodily harm or restraint upon his Person, the levying of War against him; or the inciting of any foreigners with force to invade any of his Majesty's Dominions; I say, 'tis High Treason not only to do any of these things, but by a Statute lately revived, to compass, imagine, intend, or devise any of these black hellish things, where such imaginations or intentions can be discovered by any word or deed.

"So precious is the Eye of the Law, so carefully fenced about is his life, his safety, who is, as the Holy Scripture styles him, the Breath of our Nostrils, and the anointed of the Lord.

"By the same Statute, the malicious and advised speaking of such things, as may incite the people to hatred and dislike of the King's Person or Government, is made (tho' not High Treason) yet very highly punishable, to the forfeiture of all trusts and employments whatsoever; you are therefore to enquire, whether any within the jurisdiction of this Admiralty do, by seditious insinuations, endeavour to alienate the King's subjects from their duty and allegiance.

"But here you must observe, that in Treasons and crimes of this kind, as also in Felonies, we can only make the Inquisition in this Court, they cannot be tried and sentenced here, it must be either before his Royal Highness and his Assistants at his Court of Shipwey (for that Court has cognizance of Treason as well as of other crimes), or

else by his Majesty's Commission of Oyer and Terminer, in virtue of the Statute of 28 Henry VIII.\*

"There are some sorts of Felonies and offences, which cannot be committed any where else but upon the Sea, within the jurisdiction of the Admiralty. These I shall insist upon a little more particularly, and the chiefest in this kind is Piracy.

"You are therefore to enquire of all Pirates and Sea-Rovers; they are in the Eye of the Law *Hostes humani generis*, enemies not of one Nation or of one sort of People only, but of all Mankind. They are outlawed, as I may say, by the Laws of all Nations; that is, out of the protection of all Princes, and of all Laws whatsoever. Everybody is commissioned, and is to be armed against them, as against rebels and traitors, to subdue and to root them out.

"That which is called Robbing upon the Highway, the same being done upon the Water, is called Piracy:

\* By 28 Hen. VIII., c. 15, s. 5, it was provided "that whensoever any such commission for the punishment of the offences aforesaid, or of any of them, shall be directed or sent to any place within the jurisdiction of the Five Ports, that then every such commission shall be directed unto the Lord Warden of the said ports for the time being, or to his Deputy, and unto three or four such other person or persons, as the Lord Chancellor for the time being shall name and appoint; anything in this present Act to the contrary notwithstanding." Previous to this Statute, all offences committed upon the sea were tried by the Admiral's Court, according to the rules of the Civil Law. This Statute recites that "traitors, pirates, thieves, robbers, murderers and confederates upon the sea" often escaped punishment because the trial of their offences had theretofore been ordered before the Admiral, his Lieutenant, and Commissary, according to the Civil Law. By this law, persons could not be convicted unless they confessed their offences, or the offences were proved by *indifferent* (i.e., impartial) witnesses. It was often very difficult to obtain this evidence, owing to the many exceptions to the testimony of witnesses which were allowed by the Civil Law. This Statute directs—without changing the *nature* of the offences—that the same shall be tried, according to the *forms* and rules of the Common Law, by Commissioners to be appointed under the Great Seal.



Now Robbing, as 'tis distinguished from Thieving or Larceny, implies not only the actual taking away of my goods, while I am, as we say, in peace, but also the putting me in fear, by taking them away by Force and Arms out of my hands, or in my sight and presence; when this is done upon the Sea, without a lawful Commission of War or Reprisals, it is downright Piracy.

“And such was the generosity of our ancient English, such the abhorrence of our Laws against Pirates and Sea-Rovers, that if any of the King's Subjects robbed or murdered a Foreigner upon our Seas, or within our ports, though the Foreigner happened to be of a Nation in hostility against the King, yet if he had the King's Passport, or the Lord Admiral's, the offender was punished, not as a Felon only, but this crime was made High Treason, in that great Prince Henry V.'s time; and not only himself, but all his accomplices, were to suffer as traitors against the Crown and Dignity of the King.

“There are certain Statutes relating to Trade and Navigation which made several things criminal; concerning these, the Lord Warden, as Admiral, is especially entrusted to enquire and take an account.

“You are therefore, by virtue of those several Statutes (and of some made since his Majesty's most happy return) to enquire whether any within your franchises, have exported sheep, wool, yarn, fuller's earth, or any other commodity prohibited by Law to be exported.

“You are likewise by the Act for the encouragement of Navigation, to enquire whether any have imported any Goods or Merchandizes of the growth of Asia, Africa or America, into any of his Majesty's Dominions, in any other bottoms than such as are really and truly English, three

fourths at least of the mariners being the King's subjects.

"You are by another Act of Parliament, 16 Car. II., to enquire if any masters of Merchant Ships have been so cowardly, base and treacherous; as to render and submit themselves to any Turks, Pirates, or Sea-Rovers, without fighting. For by that Act, if any master, having a ship of 200 tons, and 16 guns mounted, do yield without fighting, or do take any part of his freight, or of his goods back again, as a gratuity from the Pirate, or do yield to any that has not at least double his force, how little soever his own vessel or force be, he is to be declared by the Court of Admiralty for ever incapable of serving in any English ship, and to answer the merchant for his damages to the utmost of his ability.

"By the same Act, if a mariner do refuse to fight in these cases, he is to suffer six months' imprisonment, by warrant from the Court of Admiralty; but if he lay violent hands on his master, to hinder him from fighting, he is to suffer death as a felon; and so is such master as shall be found to have cast away his ship, or otherwise wilfully destroyed, having first taken up more money upon Bottomry than his adventure was worth.

"I shall say no more of the Laws of the Realm; and the time will permit me to say but a word or two of the Laws of Oleron, which is the second Head I proposed to give you in charge.

"The Laws of Oleron are the ancient universally received Customs of the Western part of the World; which Richard I., of immortal memory, being upon his return from the Holy War, thought fit to review and reform; and then to give them the stamp of his Royal Authority. These Laws all the sea-faring nations of this Western part of the World, soon after received and entertained from the English, by way of deference to the Sovereignty

of our Kings in the British Ocean, and to the judgment of our countrymen in Sea-affairs.\*

“ You are therefore, by the Laws of Oleron, to enquire whether they have taken upon them the conduct of ships as masters, without sufficient skill and experience; and whether any damage or danger hath arisen thereby. Whether there be any masters of ships that do not pay off their mariners honestly, without cavil or delays; that have not treated their mariners with humanity and care, when they are sick in their service; especially when they are wounded in defence of their ship?

“ You are to enquire after all stubborn, quarrelsome, thieving, mutinous, and rebellious mariners, after such as have run away from service, or have not come in to it according to their covenant; after such as steal away buoys, or cut buoy ropes. And whether they have embezzled or possessed themselves of goods cast away, and are no wreck, but are pursued and demanded by the true owners? For that is no wreck, properly so called, tho’ the ship itself be cast away, where any creature, tho’ but a dog or cat, escapes to shore alive. The custody of such goods belongs to the Lord Warden as Admiral, and are to be restored to the owners, the savers first receiving a reasonable recompense, in proportion to their hazard and pains.

“ I call these the Laws of Oleron, not but that they are peculiarly enough English, being long since incorporated

\* It was Eleanor, Duchess of Guyenne, and mother of Richard I., who brought the fief of Aquitaine in dowry to Henry II. (his father). I have already expressed an opinion in *The Office of Vice-Admiral of the Coast* (1884), p. 6, that Richard I. merely revised the ancient Laws of Oléron, or Rooles d’Oléron, in England, on his return from the Holy Land, for the use of his subjects, and that he did not originate them. That the Laws of Oléron are of French origin is the view supported in the collation of two texts unknown to Pardessus, by M. Francois St. Maur, President of the Court of Appeal at Pau, in the *Revue de Législation Anc. et Mod.* Paris: Thorin, 1873, pp. 163-85.

into the Customs and Statutes of our Admiralty; but the equity of them is so great, and the use and reason of them so general, that they are known and received all the World over, by that, rather than by any other name.

“The Third, and last Head, are the Statutes and Usages of our English Admiralty; and among them some are as ancient as King John, and Richard I.’s Time; others, as that famous inquisition at Queenborough, had above 300 Years ago; all of them peculiar to the Powers and the Office of the English Admiral.

“The Admiral has, as well by ancient Prescription as by the Statute of 1 Elizabeth and other statutes, the conservation of the great and navigable rivers, not only from all manner of nuisances, but also preserving the breed of fish.

“You are therefore to enquire of such as use any nets, engines, or other unlawful acts to catch fish withal, contrary to the Statute of 1 Elizabeth or the Customs of the Ports; of such, for example, as have not the meshes of their nets two inches and a-half broad; of such as do by any manner of way destroy the spawn and fry of fish; of such as destroy any fish before they be of a statutable size; of such as dreg for oysters, within the forbidden times, that is from the 1st, of May, to the 14th of September, by an ancient Statute of the Admiralty of England, or within any other Time forbidden by the Customs of these Ports.

“You are to enquire, whether any fishermen, subjects of the French King, do presume to fish upon this Coast, without special license from his Royal Highness, and if they have license, whether they fish with any other nets than such as are of the English size. The offenders and their boats are to be seized in any port where they happen to come.

“You are to enquire, whether they do annoy your navigable rivers or his Majesty’s ports, by throwing into

them any rubbish, filth, or ballast, or by taking up their ballast in undue or improper places. And after all regrattors and forestallers of the market upon the water; that is such as do way-lay, and buy up any manner of provision or merchandise, before it be brought into the port of discharge; and do sell it again by retail in the same port, or within four miles of it.

"The Lord Warden, by virtue of his Office of Admiral has a special trust reposed in him, in matters relating to War, and for the maintaining of his Majesty's Sovereignty in these Seas.

"You are therefore to enquire, whether any commander at sea has, upon any occasion, neglected to require and exact the just respects, deference, and salutes, due to his Majesty's flag from all Foreign ships, and hath not fought, and if need were, sunk such ships as have refused that ancient acknowledgement, which all nations have time out of mind paid to the Banner of England.\*

"If I should give you in charge to enquire, if any foreigners have refused to strike to Dover Castle, and salute it (as I think I might do, without leading you out of the Jurisdiction of our Commission), every stranger and

\* The Regulations for the Royal Navy required every foreign ship, public or private, on meeting an English man-of-war in any part of the four narrow seas, to strike her flag and lower her topsails, as a mark of respect. This Order, so far as foreign ships are concerned, has been dropped out of the Naval Instructions since the early part of this century. It was called the "Duty of the Flag." As an example of this, a small French frigate arrived in the Downs in 1769 without lowering her pendant to the King's ships. An officer was sent on board her to demand that respect; but without effect, until the *Hawke* sloop drew up alongside of the French frigate and fired two shots at her, who thereupon lowered her pendant. The Order is still in force with regard to British merchant vessels, although it has not been exacted since November 4th, 1829, when a warrant of arrest was issued against the master of the British merchant schooner *Native* for contempt in passing H.M.S. *Semiramis* in Cork Harbour, without striking or lowering her royal, being the uppermost sail she was then carrying.

foreigner that hears me, would think the enquiry very reasonable ; because it hath been always usual, they know, to pay that tribute of respect, in lieu of the safety and protection every ship is sure to find there.

“ You are to enquire, whether any of his Majesty’s subjects, have taken any commission, or do serve in any man of war, under any foreign Prince or State, without special leave from his Majesty, or his Royal Highness; his Majesty having not long since declared by his Proclamation, that he will have such proceeded against as Pirates ; \* they are to be seized on, if any of them happen to put into your ports, and to be sent up to his Royal Highness’s Lieutenant in Dover Castle. And whether any masters of ships, or others, in the late War, have been instrumental to the escape of any prisoners, by conveying them or their goods beyond seas, without letters of safe conduct from his Royal Highness. Whether any persons commissioned to take prizes in the late War, have defrauded his Majesty of his prizes, or his Royal Highness of his just share and tenths, either by not bringing all such prizes as they took to judgment ; or else breaking bulk before sentence or decree of appraisement and sale ? Or of such as have brought or received any Prize goods, before they were declared to be lawful prize in judgment ; such goods being *Bona Piratorum*, belong to the Admiral.

“ The Lord Warden, as Admiral of these Ports, has certain lawful authorities and ancient royalties belonging to his office, whereto you ought to have a special regard in your enquiries, that they be not violated or encroached upon.

\* A more important question arose after the abdication of James II., whether privateers commissioned by that monarch to make war on William III. were pirates or not. They were sailing *animo furandi*, without any national character. The matter was argued before the Privy Council, and the arguments were afterwards published by one of the Council for William III. (Dr. Tyndal) in 1693-4. The *opinio probabilior* is that the vessels were pirates.

As, whether any ship or vessel hath, upon any pretence, broken any embargo or arrest, laid upon it by authority of the Lord Warden? And whether any mariners, pressed by the Lord Warden's order, have fled away, or departed his Majesty's service, without leave.

"You are likewise to enquire, whether any do hinder the execution of the warrants, arrests, or decrees, of this Court of Admiralty. And whether any do sue or implead others elsewhere than in this Court, in such causes of action as arise within the Jurisdiction of the Admiral, and belong to his Cognizance. And whether any officer belonging to this Court, doth abuse the honour he hath to serve under his Royal Highness, by corruption, extortion, unreasonable demands, or fraudulent dealings whatsoever. Whether any do usurp or encroach on the Lord Warden's droits and royalties as Admiral? For instance, whether any Lords of Manors, or others, do challenge to themselves wrecks at sea, or other droits of Admiralty, in their Manors, without sufficient title in law so to do; and whether their bailiffs, servants or any other persons, have seized or possessed themselves of any wrecked goods, which by an ancient uninterrupted prescription belong to the Admiral.

"Besides these wrecks at sea, all jetsons, flotsons, lagons, derelicts, and deodands, belong to the Admiral; which words, because they are not so easily understood, may be thus explained: jetsons, are such goods as are thrown overboard to lighten a ship in a storm: flotsons, are such things as are floating upon the water, whether swept away (as it happens sometimes) from the opposite shore, or else vessels of wine, or oil or other goods in barrels or chests that are cast away, but not yet brought and left upon the shore: lagons, are anchors and such weighty things as being lost and sunk in the sea are taken up again: derelicts, are boats or other vessels, forsaken and found empty,

without any person in them ; these the Lord Warden has but the custody of, for where the owners are only frightened away, they may be recovered upon claim within the year and the day : deodands, are either such things as were immediately instrumental to the death of a man on ship-board, or else such goods, moneys, or jewels, as are found upon a dead man's body, that is cast ashore by the sea.\*

“ To the Lord Warden likewise, as he is Admiral, do belong all goods appertaining to the King's enemies, either lying concealed, or else surprised and taken without Commission, or otherwise brought in by storm or casualty, within the jurisdiction of the Admiral. The goods and chattels of traitors, pirates, felons, and of all accessories, not only where the treason or felony happens to be committed upon the sea, but wheresoever the fact is done or the person attainted happens to be in the King's dominions, if the goods lie within the jurisdiction of the Admiralty, they are the Admiral's. So it is of the goods and chattels of *Felons de se*, of fugitives, outlaws, such as are put in exigent ; all fines and amerciaments imposed by this Court are the Admiral's, all Royal Fishes, such as whales and sturgeons, are his, with many other particulars, which I have not time now to insist upon.

“ Thus, Gentlemen, I have given you some account, the briefest I could, of the matters you are to enquire of, I must needs in this haste, have omitted many particulars, which your judgment and experience of what is amiss, and punishable at sea, will be able easily to supply ; but I must desire you to be very exact in setting down all circumstances of time, place, and persons, as near as you can, in every matter which you shall think fit to present.

“ If you do make your presentment honestly and conscientiously, with a just regard to the Oath you have taken,

\* Deodands were abolished by 9 & 10 Vict., c. 62.



you will in so doing, acquit yourselves of a duty not only incumbent on you, but acceptable to the King, and to his Royal Highness our Lord Warden. For since the safety, honour, and wealth of England, does so much consist under the good Providence of God, in that great force, and in the Commerce and Traffic which is maintained by Sea, it must needs be a service of importance, to the King, and a very high satisfaction to his Royal Highness (who is principally entrusted under his Majesty in all sea-affairs) to keep up the old English discipline among our sea-faring men, to reform the abuses, and punish the misdemeanours, that are a blemish to the name and reputation of the English ; and how can this be done effectually unless men upon their Oaths (as you are) be diligent in their enquiries, exact and faithful in their presentments.

“ And truly, Gentlemen, you had not been summoned hither this day (as you are by his Royal Highness’s special direction) but there was reason to hope, that the mutual satisfaction which the Lord Warden and his Ports have this day in each other, would be a fresh motive, and a very pressing engagement upon every one of you, with vigour and zeal to preserve and promote the public good, as it will be, I am very well assured, his Royal Highness’s care to watch over your Privileges, and to espouse the defence of them, with as much concern and tenderness, as any of his predecessors in this place have done before him.

“ And as you, Gentlemen (I mean not only you of the jury, but the gentlemen of these Ports in general), do owe those great privileges you have these many hundred years enjoyed, far beyond any part of the kingdom, to the active, signal loyalty of your ancestors, to that height of true English valour and prowess, they have upon all occasions shewn ; to that special zeal and devotion they always had for the Crown ; so the same spirit of valour, the same frame and temper of ancient loyalty, shewing itself in you,

as it did in them, will make it less difficult to preserve your privileges still entire and inviolable, especially under so gracious and just a King, such an illustrious and affectionate Lord Warden.

“And if you consider rightly the affection which his Royal Highness has for your public good, you may without vanity value yourselves altogether as highly as those your ancestors, who had the great Duke of Lancaster, and the victorious Prince of Wales, afterwards Henry V., for their Wardens. What they boasted of in their days, you do as completely enjoy, blessed be God in yours; you have for your guardian and protector under the King, as they had, the greatest subject of England. Nay (I may add, truly, his actions, his merits, his blood considered), the greatest subject of the Christian World; and which is peculiar to the honour, and the interest of sea-port towns, as great an Admiral as ever weighed anchor, who, as he bears a principal part in the glories of his Majesty’s reign, so he desires, and will endeavour to do in the restoration and flourishing of his Cinque Ports and all that depend upon them.”

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#### V.—THE LATE MR. JUSTICE CAVE.

THE Hon. Sir Lewis William Cave died at half-past two o’clock of the morning of Tuesday, September 7th, at his residence, Manor House, Woodmansterne, Epsom. On the preceding Thursday afternoon, while in his study, he had a paralytic seizure. He was alone at the time. Lady Cave, who was in an adjoining room, heard a fall, and hastening to the study found her husband lying on the floor. A telegram was immediately despatched to Dr. Alexander, of Epsom, who was speedily in attendance, and a further telegram was sent to an eminent doctor in

London. The deceased Judge, however, never regained complete consciousness.

He was born on July 3rd, 1832, at Desborough, in Northamptonshire, and was educated at Rugby, being the eldest son of the late Mr. William Cave, of Desborough. In 1851 he was elected to an Exhibition at Lincoln College, Oxford, and took his B.A. degree in 1855, having been placed in the second-class classics in the final examination. In 1856 he was admitted as a student at the Inner Temple, and in that year married Julia, daughter of the late Rev. C. F. Watkins, vicar of Brixworth. In June, 1859, he was called to the Bar. In the following year he joined the Midland Circuit, and subsequently left it to join the new North-Eastern Circuit. He was appointed a Revising Barrister in 1865, and held that office until he obtained silk in 1875. In 1873 he was appointed Recorder of Lincoln, and was elected a Bencher of his Inn in 1877. In the same year he was named a Commissioner of Assize for the Autumn circuit. In 1880 he became a Commissioner to inquire into the Parliamentary elections at Oxford; and in March, 1881, was appointed one of the Justices of the High Court, receiving the honour of knighthood in the following month. In December, 1884, Mr. Justice Cave was appointed Judge in Bankruptcy, in which position he administered the new Bankruptcy Act which came into operation on January 1st, 1884. His retirement was announced on the eve of the present Long Vacation, when, having completed fifteen years' service on the Bench, he was entitled to retire on a full pension. Mr. Justice Cave was the editor of several standard law books, and from 1861 to 1865, in conjunction with the Honble. Mr. Chandos Leigh, Q.C., edited the "Reports of the Court for the Consideration of Crown Cases Reserved." His other works, as an editor, included the seventh edition of Stone's "Practice of Petty

Sessions," prepared in conjunction with Mr. Bell in 1861, and in preparing the last edition of Burns' "Justice of the Peace"; and in 1869 and in 1875 the sixth and seventh editions respectively of "Addison's Treatise of the Law of Contracts," and in 1879 the fifth edition of the same author's "Law of Torts."

The funeral took place on Friday, September 10th, at St. Peter's, Woodmansterne. By desire of his widow, the arrangements were as simple and quiet as possible. The service was conducted by the Rev. H. Hamilton, vicar of Woodmansterne. Lady Cave was unable to attend, but the three sons and four daughters of the deceased and his two brothers were present. The body was taken to the grave on a hand bier, the mourners following on foot. Among the mourners were the Lord Chief Justice of England (Lord Russell of Killowen), Mr. Justice Lawrance, Mr. Justice Kennedy, Mr. Horace Smith (Police Magistrate), Mr. N. C. Smith, Fellow of Magdalen College, Oxford, nephew of the late Judge, Mr. Josceline Watkins, J.P., The Rev. Henry Stokoe, D.D., Sir Sherston Baker, Bart. (a former pupil of the late Judge), and Mr. Powell, the Judge's faithful and attached Clerk.

As the funeral took place in the middle of the Long Vacation, many of the other friends of the late Judge were unable to be present. The throng of village people in the little church and churchyard of Woodmansterne testified to the affection with which the late Judge and his family were regarded by all around them.

It is difficult to realise the great loss which the death of Mr. Justice Cave has caused to the Judicial Bench, as well as to the Public at large. He was remarkable for his indomitable industry, which he always showed in any work undertaken by him, educing order out of chaos. A wonderful exhibition of this may be remembered in the Bribery Commission at Oxford, where he sat as Com-

missioner; although it evinced itself not only on that occasion, but in every case which he tried, and in his schemes for facilitating the business of the Courts, the arrangements of the Judges, and his own private affairs. Order and method were his strong points. His knowledge of the Common Law has rarely been exceeded.

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## VI.—THE AMERICAN BAR ASSOCIATION.

THIS distinguished and influential body held its twentieth annual meeting at Cleveland, Ohio, on the 25th, 26th, and 27th days of August last. By an unfortunate oversight the days of the meeting were exactly coincident with those of the holding of the annual encampment of the Grand Army of the Republic at the neighbouring city of Buffalo. This drew off some of the attendance from the American Bar Association; but nevertheless some of the members contrived to divide their time between both meetings. This meeting of the association, though not as successful as the meeting last year, which was distinguished by the attendance of the Lord Chief Justice of England and of other distinguished lawyers of this country,—was nevertheless fairly successful.

The address of the president, Hon. James M. Woolworth, of Nebraska, was a valuable paper, full of thoughtful suggestions, and was well received. The space at our disposal is not sufficient to enable us to print it in this number.

The most noteworthy feature of the meeting was the address of Hon. John W. Griggs, Governor of New Jersey, upon "Law-making." The general purpose of this address was to enforce the idea that, whereas, every other business, public and private, is generally committed to the hands of competent experts, yet the laws of our country

and of our several States are made by the incompetent, the inexpert and the ignorant, and even by the dishonest and corrupt. One of the means proposed by the distinguished speaker for correcting the evil was to place a limitation upon the power of legislative bodies similar to that which obtains in the British Houses of Parliament. No brief description could do justice to this admirable address. It abounded in statistical information, in well-chosen points, and in apt illustrations. It was couched in the most classical English, and its trains of thought and expression were in every case the most happy. We will hazard the statement that, not excepting the address delivered last year by the Lord Chief Justice of England, the equal of this address has never been delivered before the American Bar Association.

Let us now consider the papers.

The paper read by Robert Mather, of Illinois, on "Constitutional Construction and the Commerce Clause" was in all respects an admirable paper. It was read at the evening session. The paper which immediately followed it—that of Professor Eugene Wambaugh, of Massachusetts, on "The Present Scope of Government,"—was an admirable paper, intended to shew the extent to which the government deals with many of the common affairs of life. But as the audience was beginning to get tired, it was not so well received.

One of the noteworthy features of the American Bar Association is the section upon Legal Education. Some useful and interesting papers were read before this section, notably that of Professor Gregory, of Wisconsin, on the "Compensation of Professors in the Law Schools Throughout this Country and Europe." The paper of Prof. Finch, of Indianapolis, on the "Teaching of Insurance in the Law Schools" was criticised as not being a paper upon Legal Education or any approach to it, but as being a criticism

on legislation unfriendly to insurance companies, by a lawyer who has been long identified with those companies and who has long published a journal in their interest. The paper read by Henry E. Davis, of the District of Columbia, was scholarly and fine.

On the afternoon of the last day of the session some debate took place in the section upon Legal Education with reference to some of the papers which had been read. One member put forth the view that the State is under no obligation to furnish gratuitous instruction in the law, any more than to furnish gratuitous instruction in any other technical science. It is believed that this view is unsound. The sound view is believed to be that the State is under an obligation not only to publish to its citizens the laws by which they are to be governed, but also to instruct them in those laws, and to this end to furnish gratuitous instruction therein to all who may apply therefor. But with the furnishing of such gratuitous instruction, and of a suitable place in which it may be delivered, the duty of the State obviously ends: it stands under no duty to feed, clothe, and shelter, or even to furnish books to those whom it thus instructs while they are receiving its instruction.

Another matter which received some discussion was whether the State ought to allow the degree of Bachelor of Laws conferred by incorporated law colleges to entitle the holder to admission to the bar. The better opinion was that it ought not. The better opinion was that, in view of the abuses which have sprung up in this practice, it is better to have all applicants for admission to the bar of a State pass an examination in a prescribed number of subjects or titles in the law, either before the highest court of the State or before a commission of competent members of the bar appointed by that Court. Obviously, the standard ought to be uniform. Obviously, the body which passes upon the qualifications of the applicant ought to be

influenced by no other motive than to subserve the administration of justice and the welfare of the people. But the professors of the law schools are influenced by the motive of graduating as many law students as possible, in order to swell the aggregate amount of fees for instruction in the school and to make the best apparent shewing of its prosperity. Another abuse in connection with this system is that, if the statute law of the State allows the diploma of the law school of the university of the State to be a title of admission to the bar, every little law school that springs up in the State, like a mushroom in the night, demands from the legislature that its diploma shall carry the same privilege, and generally gets it.

Before quitting the subject of the American Bar Association we desire to renew the suggestion to the executive committee of the advisability of holding a mid-winter session each year in some of the Southern States. This body has always held one-half of its sessions at Saratoga Springs, New York, where it was first organised. For a considerable period after its organisation it held all of its sessions there. It has never held a session west of the western shore of Lake Michigan. None of its sessions has ever been held as far west as the centre of population of the United States which is now in the vicinity of St. Louis. A scrutiny of the roll of members attending each session will shew that the attendance is very largely made up of lawyers living at no very great distance from the place of meeting. The plain truth is that this learned body is, and always has been, too much of a North-Eastern Bar Association. The only conspicuous honour which it has to confer, that of its Presidency, has, it is true, always been passed around to the different sections of the country. Massachusetts had it last year, Nebraska this year, and Louisiana will have it next year. But the fact remains that the great preponder-



ance of its active membership is in the East and North-East. This does not, of course, detract from its dignity or efficiency; but it prevents it from being in the largest sense the representative of the best opinion of the bar of the whole country.

Point is given to this suggestion by the manner in which the session treated the learned report which we elsewhere publish in this number, of the Committee on Jurisprudence and Law Reform, dealing with the judicial construction of the so-called Federal Anti-Trust Law. It will appear from that report that, in every instance save one, whenever an attempt was made in a Federal Court to enforce that law against the rich and powerful, the Court found lions and even mountains in the way; that in that one case the decision in favour of popular right was rendered by a Court almost equally divided; and that, taking all the Judges in the Court above and in the Court below who had voted upon the question, there was a preponderance of one vote against the law. And when we consider that the minority of the ultimate Court put forward the astonishing proposition that a restraint of trade is to be innocent or punishable as a crime accordingly as some Judge subsequently—applying possibly the measurement of the Chancellor's foot—deems the act to be reasonable or unreasonable,—we have a standing illustration of the difficulty of enforcing the plainest possible statute against the aggregated rich. Whereas, when it came to enforce it against striking dock labourers and railway labourers, whose labour insurrections interfered with the operations of interstate commerce, the Federal judicial mind glided easily, nay swiftly, to a favourable result. Here was a field for debate such as has rarely been presented to such a body. Nevertheless the corporation lawyers, who composed the power and the talent of the meeting, passed the report by “*sub silentio* and with averted eye,” and consumed the evening during which

they might have debated it, in a wrangle over the question of international arbitration—a question, not of law, but of politics and diplomacy.

We hope to hold the next meeting of the American Bar Association some time during the coming winter in the City of New Orleans. Although the Bar of Louisiana is behind that of many other States in that they have no State Bar Association, yet there are among them many distinguished lawyers; and the Bar and people of that State will not be outdone in hospitality.

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## VII.—THE INSTITUTE OF INTERNATIONAL LAW AT COPENHAGEN.

THE latest Session of the Institute of International Law was held at Copenhagen from August 26th to September 1st, 1897. During the course of this Session the Institute adopted, after considerable discussion, the Draft Resolutions presented by Messrs. Lyon-Caen and De Bar relative to the *Capacity of Foreign Public Moral Personages*; also a collection of principles and wishes elaborated by Messrs. L. Olivi and Heimbürger for the regulating of questions of International Law concerning *Emigration*; and the first part of very long and interesting Draft Rules presented by Mr. Feraud-Giraud on the *Legal Regulation of Ships and their Crew in Foreign Ports*. It also adopted a number of rules prepared by Messrs. Brusa and Kleen for the purpose of harmonising the *Regulation on Contraband of War* voted at the Session of Venice (1896), with the *Regulation on Maritime Prizes* voted at the Session of Heidelberg (1887). Several other important matters still claimed the attention of the Institute, but were adjourned to the next Session, either on account of the absence of the members who had charge of

them, or on account of pressure of time. The preparatory work elaborated by the 12th Commission (by Messrs. De Montluc and Stoerk) in view of the International Rules and difficulties resulting from *Collisions at Sea*; by the 14th Commission (by Messrs. Darras and Roguin) concerning the *Constitution of International Tribunals* and the interpretation of conventions of International union; and by the 15th Commission (by Mr. Barclay) on the very delicate question of *Double Impositions*, or the tax on foreigners, were presented. The first two matters having already passed through every phase of procedure may be discussed by the Institute in full Session at its next meeting. The same may be said of the question of *Lis Pendens Between the Jurisdictions of Different States* which was ready for the Session of Venice, but which the illness of one of its principal supporters prevented from being examined at Copenhagen.

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## VIII.—CURRENT NOTES ON INTERNATIONAL LAW.

### *Lex Loci Contractus.*

The contractual nature of preference shareholders' rights gave rise to a curious question in the recent case of *Spiller v. Turner*, 1897 (1 Ch.) 911.

The Scottish Australian Investment Co., Limited, was registered in England in 1856 to carry on an investment business and to acquire and develop property in Australia and the British Colonies.

In 1865 and 1879 issues of preference stock were made upon conditions guaranteeing the stockholders "interest in "perpetuity at the rate of 6 per cent. per annum." In 1890 the Queensland Legislature passed a Statute imposing a duty in the nature of income-tax on all dividends or

interest paid out of assets in the colony to the members of companies carrying on business therein. The defendant company was carrying on business in the colony, but the preference stockholders claimed that as between themselves and the ordinary stockholders they were entitled under their contract to be paid their full 6 per cent. interest on the preference stock without any deduction on account of duty payable under the colonial Statute. Kekewich, J., held that the proper law of the contract (whether regarded as the *lex loci contractus* or *solutionis*) was clearly English law, and therefore that the interest was to be so paid without deduction, "notwithstanding that the colonial legislature has enacted that it is to be so deducted, "because those legislative provisions are of no avail against "the provisions of the contract in this country."

The decision was expressed to be without prejudice to any question affecting any stockholder who might be domiciled in Queensland.

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#### **Exterritorial Jurisdiction by Treaty.**

A very important decision was given by the Judicial Committee of the Privy Council in the case of *Sayad Muhammad Yusuf-ud-Din v. The Queen*, 76 L.T.R. 813. This was an appeal against a judgment of the Chief Court of the Punjaub, which dismissed an application by the appellant to have a warrant which had been issued against him cancelled and certain consequent pending criminal proceedings stayed or quashed.

The appellant was a subject of the Nizam of Haiderabad and "resident" (*semble* domiciled) in the Independent State of which the Nizam was Sovereign. It appears that by treaty between the Nizam and the British Government a concession had been granted to the latter to make a railway through the Nizam's dominions and to exercise

“civil and criminal jurisdiction along the line of railway as  
“in the case of other lines running through Independent  
“States.”

The appellant had been arrested by British officers in a station on this railway upon a warrant issued by the District Magistrate at Simla, charging him with abetting an attempt to bribe a person at Simla.

The Judicial Committee held (a) that the above-mentioned concession did not amount to a cession of territory; (b) that the offence alleged was not committed on the railway or in any way connected with the administration of the railway, and, therefore, was not within the scope of the criminal jurisdiction granted by the concession; and (c) that as the appellant was not a British subject the warrant and arrest were illegal and the proceedings must be quashed.

The status of natives of Protected States in India is a curious one. They are for many purposes as against Foreign States, regarded as British subjects, but it appears from the decision quoted that this does not affect their independent status in relation to our own Government. The question is discussed by the late Mr. W. E. Hall in his *Treatise on the Foreign Powers and Jurisdiction of the British Crown*, § 61; and in Piggott's *Exterritoriality*, pp. 154, 155.

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#### English Probate of Foreign Wills.

The question arose in *Attorney-General v. New York Breweries Company*, 76 L.T.R. 721, as to whether an English debtor who, before grant of probate, formally acknowledges the title of foreign executors to English personalty and pays some of it over to them, is liable to a penalty under 55 Geo. III., c. 184, sect. 37. The latter Act provides that if any person shall “take possession of and in any manner  
“administer any part of the personal estate and effects of

"any person deceased without obtaining probate of the will . . . within six calendar months after his "decease" shall forfeit a sum of £100 and incur certain other penalties.

In the case quoted, a testator who died domiciled in America, was at the date of his death a registered holder of shares and debentures in the defendant company, which was a company incorporated and registered in England. The company caused these shares and debentures to be transferred into the names of his executors, and paid to the latter dividends and interest which had accrued due. It is not clear from the report whether the acts complained of took place more than six months after the testator's death, but presumably this was the case, since it was alleged (though apparently not admitted or proved) that the company did the acts knowing "that no representation had "been taken out in this country."

The Divisional Court held (a) that as regards the transfer of stock this was not a "taking possession of the property "of the deceased at all"; (b) that as regards the payment of interest and dividends this was perfectly justifiable, as by the well-established rule of law a debtor has a right to pay an executor without requiring him to prove his title by the production of probate. The information by the Attorney-General was therefore dismissed.

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#### **Lis Alibi Pendens.**

In the case, in 1885, of *The Christiansborg*, 10 P.D. 141, the Court of Appeal (Esher, M.R., dissenting) granted a stay of proceedings in an Admiralty action against a Danish ship on the ground that similar proceedings were pending in Holland. The Danish vessel had been released by the Dutch Courts upon a substantial guarantee given by the underwriters for due satisfaction of any judgment for

damages which might be thereafter given in the proceedings. The decision of Baggallay and Fry, L.JJ., was based on the conclusion that the guarantee was in lieu of bail, or that at all events the plaintiffs' agent in Holland having accepted the guarantee, it would be a breach of faith to arrest and proceed against the ship in this country.

In the recent case of *The Mannheim*, 1897, P. 13, a British and a German ship had come into collision near Rotterdam. The agents at Rotterdam of the owners of the two vessels exchanged written agreements to give bail to answer any damages which might be awarded by a competent Court. The German ship was nevertheless arrested here in an action *in rem* at the suit of the owners of the British ship. Gorell Barnes, J., distinguished the case from that just quoted, and refused an order for her release and for a stay of all proceedings, on the ground (a) that the ship was never arrested abroad and no foreign *legal* proceedings were pending, and (b) that by accepting the guarantee the plaintiffs had not debarred themselves from arresting the ship.

JOHN M. GOVER.

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## IX.—NOTES ON RECENT CASES (ENGLISH).

### Deeds of Arrangement and Opposing Creditors.

WHEN creditors are present at a meeting where a resolution to accept a deed of assignment is proposed, and some of them do not openly dissent therefrom, are they to be considered as assenting parties thereto? Both the Divisional Court and the Court of Appeal have answered this question in the affirmative. Such a decision as this casts a great responsibility on all persons who attend meetings in which they are interested and do not vote. The foregoing ruling was given in the case of

*Re Crosland, ex parte Crosland.* It may be of use to recall the facts of the case. The debtor called a meeting of his creditors and a resolution was passed that the debtor should execute a deed of assignment in favour of his executors, and about seven-eighths of the meeting voted in favour of it, no hands being held up against it. A circular that the resolution had been unanimously passed was sent out to all creditors and repudiated by none. Subsequently two creditors who had been present at the meeting petitioned for the debtor to be made bankrupt. The Acts of Bankruptcy relied on were two—first, notice that the debtor was about to suspend the payment of his debts; and secondly, the execution of an assignment to a trustee in favour of his creditors. The question was, therefore, whether or not the two joint petitioners were not estopped from taking advantage of the execution of the assignment by their acquiescence and assent to its being executed. The Registrar at Huddersfield made a receiving order, he considering that there had been no acquiescence on the part of the creditors. The debtor took the case to the Divisional Court in Bankruptcy, where it was held that there was acquiescence in the deed of composition, and that as the petitioning creditor, who was present at the meeting, did not dissent, any objection afterwards on his part would be of no effect. The receiving order was accordingly discharged. The matter then went to the Court of Appeal for leave to appeal, but the Master of the Rolls considered that the proper inference to be drawn was that the petitioning creditor at the meeting did not agree to the deed of composition, and that he changed his mind afterwards. The resolution was said by the chairman to have been passed unanimously, and no objection was taken at the time. The petitioning creditor, who was present, meant to have agreed at the time to the decision come to, and that being so, leave to appeal from the decision of the



Divisional Court was refused. Such a decision as this is of far-reaching importance if the principle is to be accepted as part of the law that anybody who attends a meeting of creditors at which a resolution was passed which might terminate in the execution of a deed and does not openly dissent, will be bound as assenting to the action of the meeting. A number of authorities were quoted in support of the view that the petitioning creditors were estopped from taking advantage of the execution of the deed of assignment—as an act of bankruptcy by their acquiescence to its being executed. A similar point was raised in the case of *Re Hawley, ex parte Ridgway* (76 L.T.R. 501). There it was laid down that a creditor who has acquiesced in a deed of assignment for the benefit of creditors is estopped from relying on its execution as an act of bankruptcy or from relying on the circular convening a meeting at which a composition was voted, as a notice of intention to suspend payment so as to constitute another act of bankruptcy. The case of *Re Woodroff, ex parte Woodroff* (76 L.T.R. 502), has also a bearing on the subject. There a creditor, without executing or expressly assenting to a deed of arrangement for the benefit of creditors, may be estopped by this conduct from setting up the deed as an act of bankruptcy. A creditor so estopped cannot set up the circular convening the meeting of creditors as a notice of intention to suspend payment if the circular formed part of the scheme. It is a curious fact that the foregoing case *Re Crosland* is only reported in the *Huddersfield Examiner and Accountant* of October last. It is an exceedingly important case and merits careful attention.

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#### The Liabilities of Underwriters.

The liabilities of underwriters were raised in the case of *Holophane, Limited v. Hesselatine* (13 T.L.R. 7) in the House of Lords. The underwriter had not used a formal application

for shares by filling it up. The underwriting letter, however, stated that should the underwriter fail to comply with the terms therein mentioned, the person to whom it was directed could hand in an application form to the company as agent for and on behalf of the underwriter. In the present instance the point was as to whether through there not being any application form filled in by the underwriter, there was a binding contract which could be enforced. The House of Lords considered that they could not strain any agreement which might exist in favour of the company, and they accordingly refused to accept the interpretation of the company that the underwriter was bound. The Master of the Rolls, when the case was before him in the Court of Appeal, gave it as his opinion that the parties to the document were "both athletes in finessing." The framers of the underwriting, the Court of Appeal also seemed to think, were not people to whom much scope should be permitted. Men of straw should not be interested in underwriting schemes. Documents also should not be worded so cleverly as to excite comment from the judges, as great objection is taken to undue finessing. It should also be patent to everyone that underwriters have other duties to perform than collecting commissions merely. These and some other practical remarks were made by Lord Esher.

#### **Payment of Debenture Interest.**

The recent decision in *Bosanquet v. St. John d'El Mining Company, Limited* (*Times*, July 17th, 1897), possesses some features of interest. A debenture-holder and shareholder in the company on behalf of himself and all other debenture-holders and shareholders, sought to restrain the directors from using the profits of the company in payment of dividend until the amount previously paid upon capital for debenture interest had

been replaced. A serious accident had occurred at the mine which entailed considerable capital expenditure in reopening it before any profits could be gained from it. It was in order to find the funds for that capital that the capital of the company was increased and debentures were issued. The mine was not, however, reopened until some eight years later, and during that period no profit was earned, but nevertheless the debenture interest had to be discharged, and this was paid regularly. No objection can be made to such payment of debenture interest by a company, even though no profits are coming in, inasmuch as debenture interest is simply an expense, and not a distribution of profits in the form of dividend. On the mine being reopened it of course became clear that eight years' debenture interest had been paid out of the capital of the company, which accordingly created a deficiency. The question, therefore, was whether or not a company can declare a dividend out of current profits, notwithstanding the fact that there is a deficiency in respect of previous years' workings. The Court held that the company was not bound to apply the profits in replacing the debenture interest paid out of capital in previous years before declaring a dividend. The decision accordingly shows that a company is under no obligation to make good the loss on previous years prior to declaring a dividend out of the profits of a current year. It will be observed, as a contemporary points out, that the expenditure necessary to remove the effect of damage was in the nature of repairs, and not in the nature of something which increased the value of the original property. All that the repairs could be said to have done was to have made the property as valuable as it was before the accident occurred, and there is, therefore, no justification for adding anything on to the original cost. The mere magnitude of the repairs could not in such a case be taken into consideration, and all

repairs to all fixed assets would have to be taken to be chargeable to capital or revenue at the discretion of the directors of the company.

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### **The Rights of a Chairman of a Limited Company.**

The ordinary general meeting of a limited company was held at an hotel for taking the report and balance-sheet. The chairman proposed that the report and balance-sheet be adopted. This was seconded, and the resolution was put to the meeting (both preference and ordinary shareholders voting) and declared by the chairman to be carried. A poll was then demanded in writing, but the chairman declined to take one, and stated that he was advised that it was out of order. A proposal was then made that a committee of investigation should be appointed, when the chairman ruled that ordinary shareholders should not serve upon such committee, and refused a poll upon such ruling, ultimately adjourning the meeting for two months without the consent of the meeting or any vote having been taken. By clause 70 of the Articles of Association, it was provided that "The holders of preference shares shall not be entitled to notice of or to attend or vote at any ordinary general meeting, nor shall they be entitled to notice of or to attend or vote at any extraordinary meeting, except (a) if and so long as the cumulative dividend payable on their shares shall not have been paid, and (b) in respect of any matter directly affecting the holders of preference shares as against the holders of any other class of shares of the company, either created at the time or then about to be created." One of the ordinary shareholders then moved before the Vacation Judge for an order restraining the chairman and other from holding any adjournment of the ordinary general meeting, or alternatively for a poll to be taken, or in either alternative to restrain defendant from receiving or acting upon any report of a committee of investigation. The

Court, however, in this case of *Collins v. The Birmingham Brewery, Limited* (103 L.T. 481), refused the application. It was held that it was quite competent for the chairman to adjourn the meeting to any time he thought fit, and this even though no resolution was proposed, and in fact the majority of the shareholders objected. The Articles of Association ought to govern such matters as these, but if there are no special Articles to the contrary, then is it not more correct to assume that shareholders have themselves some power of passing resolutions? As has been pointed out, to give the chairman all the power, permits him to postpone indefinitely the proposing of resolutions that may prove inconvenient. The position of the preference shareholders seems also a peculiar one according to this case. Mr. Justice Byrne, in the course of his judgment, said he was of opinion that the consent of the meeting need not be signified if the chairman declared it was adjourned with the consent of all present. The fact that the notices were sent to preference shareholders did not invalidate the meeting, and though they might have no right to attend an ordinary meeting, that was no reason why the right persons could not effectively attend an adjourned meeting. A preference shareholder could be affected, if at all, only in a very indirect way by not being allowed to attend an ordinary general meeting. Preference shareholders, it appears, too, are not entitled to vote, even if their dividends have not been paid. Here, as no effective resolution was passed, the resolution purporting to appoint a committee of investigation was invalid. The plaintiff and the other shareholders were not estopped from objecting to the constitution of the committee of investigation. The adjourned meeting could not be prohibited, but the company, which would include the chairman, could be restrained from receiving or acting upon the report of the committee of investigation.

**Municipal Loans and their Redemption.**

The guardians of the poor of the West Derby Union borrowed money since the 24th April, 1871, which was the date on which the Poor Law Loan Act, 1871, was passed, and there were expressed terms for paying a fixed rate of interest and for repaying the loan by instalments extending over a term of years. Such guardians, it has been held, cannot, even with the sanction of the Local Government Board, redeem the loan prior to the expiration of the term without the consent of the lender. This is an important decision by the House of Lords in the case of the *West Derby Union v. The Metropolitan Life Insurance Society* (76 L.T. 73; [1897] 1 Ch. 335). The Society naturally resisted the claim. The ratepayers, as the Lord Chancellor said, might find it more in their favour to have such a right, as the rate of interest might be materially reduced and the local authorities consequently relieved by having less interest to pay. The words of the section, however, looking at them strictly, did not appear to give any such power as that which was claimed. In fact, it was the other way about, for the wording of the clause appeared to prohibit any such power.

T. F. UTTLEY.

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**X.—A POINT IN AMERICAN LAW.**

THE case of *People v. Zucker*, 46 N.Y. Supp. 766, recently decided by the Supreme Court of New York, suggests, if it does not actually raise, an interesting and difficult point in the law of evidence. At the trial of the defendant for arson, consisting in the burning of a building in New York, the judge allowed the government, for the purpose of corroborating its principal witness, to

put in evidence tending to prove that the defendant was guilty of previously wilfully setting fire to a building in Newark, N.J. The Supreme Court, by a vote of three to two, held that this was not reversible error. The material facts were as follows. The furniture in the New York building had been removed to that in Newark, the fires took place within three days of each other, and the motive in both cases was to defraud the insurance companies. Relying on these facts the majority held that the two crimes were part of one and the same scheme, each being the supplement of the other, and neither being complete alone. The minority, in the able opinion of Ingraham, J., deny that the two crimes were connected otherwise than as crimes of a similar nature committed for a similar purpose.

The decision of the majority seems to be sound. The point raised by the minority opinion, however, presents a more difficult question. May evidence of crimes other than the one charged and unconnected with it, but of a precisely similar nature and done for a precisely similar purpose, be admitted to prove the crime charged, if not unreasonably separated in time? It is necessary to understand exactly the limits of the problem. Acts such as are suggested in the question certainly come under the general description of acts done for a common purpose. It is to be noted, however, that the ultimate purpose or result is not the final crime, the one for which the defendant is being tried, but a fixed and constant quantity outside of all the crimes, and having an equal influence on each. In *People v. Zucker*, 107 Mass. 571, for instance, the constant quantity is the scheme to obtain insurance money generally; the similar acts are wilfully setting fire to buildings insured. Should evidence ever come in as tending to prove the crime itself by bringing out more strongly the probable motive when there is no question as to the character of the act?—*Harvard Law Review*.

## Books Received.

*The Law Relating to Factories and Workshops.* By May E. Abraham (Mrs. H. J. Tennant) and Arthur Llewelyn Davies. Eyre & Spottiswoode, London, 1897. Price 5s.

*A Treatise on Mortgages, Pledges, and Liens.* By Walter Ashburner, M.A. William Clowes & Sons, Ltd., London, 1897. Price £1 5s.

*The Law and Practice of the Stock Exchange.* By B. E. Spencer Brodhurst, M.A., B.C.L. William Clowes & Sons, Ltd., London, 1897. Price 12s. 6d.

*Law of Libel and Slander.* By Hugh Fraser, M.A., LL.D. William Clowes & Sons, Ltd., London, 1897. Price 12s. 6d.

*The Order of the Coif.* By Alexander Pulling. William Clowes & Sons, Ltd., London, 1897. Price 10s.

*The Sale of Goods Act, 1893.* Second Edition. By Frank Newbolt, M.A. Sweet & Maxwell, London, 1897. Price 3s.

*Encyclopædia of the Laws of England.* Under the General Editorship of A. Wood Renton, M.A., LL.B. Vol. III. Sweet & Maxwell, Ltd., London; and William Green & Sons, Edinburgh, 1897. Price £1.

*The Workmen's Compensation Act, 1897, and Appendix containing the Employers' Liability Act, 1880.* By W. Addington Willis, LL.B. Butterworth and Co., and Shaw & Sons, London, 1897. Price 2s. 6d.

*Fisher's Law of Mortgage.* By Arthur Underhill, M.A., LL.D. Butterworth and Co., London, 1897. Price £2 12s. 6d.

*The Canadian Annual Digest (1896).* By C. H. Masters and C. Morse, LL.B. Canada Law Journal Company, Toronto, 1897.

*The Student's Guide to the Law of Real and Personal Property and Conveyancing.* By J. Indermaur and C. Thwaites. Geo. Barber, London, 1897. Price 10s.

## Reviews.

*A Concise Treatise on Mortgages, Pledges, and Liens.* By WALTER ASHBURNER, M.A., of Lincoln's Inn, Barrister-at-Law, late Fellow of Merton College, Oxford. London: William Clowes and Sons, Limited. 1897.

The law on this subject is vast, and as a rule but imperfectly known by the greater number of legal practitioners. It is therefore with pleasure that we hail the advent of this erudite compilation, which embraces within a moderate volume the jurisprudence on the above securities. The work is very



complete, beginning with mortgages—both legal and equitable—touching on bills of sale, maritime liens, priority of maritime securities, and cognate subjects. In particular, the right of a solicitor to a general lien on documents of his client is very clearly explained, and the limitations on his right of detainer properly pointed out. The book bids fair to supply a gap in our legal literature.

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*The Order of the Coif.* By ALEXANDER PULLING, Serjeant-at-Law. London: William Clowes and Sons, Limited. 1897.

This is a re-print of the original edition of an interesting book, written by the late Mr. Serjeant Pulling. Although there is little to recommend it as a law book, it is nevertheless a volume which is bound to be cherished by antiquarians. The Judicature Act, 1873, struck a fatal blow at the Order of the Coif, by enacting that "no person appointed a judge of either of the said courts (High Court of Justice and Court of Appeal) shall henceforth be required to take, or to have taken, the degree of Serjeant-at-law." It is evident, however, that there is no good reason why the Crown should not continue to create Serjeants, if there are members of the Bar desirous of that rank, but the abolition of Serjeant's Inn by the Serjeants themselves, in our own times, renders the prospect of a new creation to the Coif very improbable. Therefore it is the more desirable that a good account should be preserved of that ancient Order, which may be said to have come in with the Common Law of England; and the work before us which is based on all the earlier researches on the subject, is a compilation at once interesting and learned.

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*The Sale of Goods Act, 1893, with Notes.* By FRANK NEWBOLT, M.A., of the Inner Temple and North Eastern Circuit, Barrister-at-Law. Second Edition. London: Sweet and Maxwell, Limited. 1897.

This Act was originally introduced by Lord Herschell about 1888, and follows closely the same lines upon which the Bills of Exchange Act, 1882, was framed, its object being to "reproduce as exactly as possible the Statutory and Common Law rules relating to the sale of goods." It is a complete Code of the law relating to the sale of goods in all parts of the United Kingdom, while allowing the Scotch law to retain all its distinctive peculiarities intact. Comparatively few cases have been decided

under this Act during the three years it has been in force, but the learned editor has collected them all, and arranged his notes in a most useful and comprehensive manner, rendering the book of much value to the every-day practitioner.

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*The Law and Practice of the Stock Exchange with Appendices, containing the Rules and Regulations annotated, and Forms of Instruments accompanying a Mortgage of Securities.* By B. E. SPENCER BRODHURST, M.A., B.C.L., of the Inner Temple, Barrister-at-Law. London: William Clowes and Sons, Limited. 1897.

It is to the honour of our William III. that he introduced the principle, that it is the duty of a State to keep faith with its creditors. Thereby he opened the door to those commercial movements which ultimately led to the creation of the Stock Exchange. Towards the end of the 17th century, financiers were beginning to realize that there was money to be made out of the negotiation of government loans, and by dealings in tallies, exchequer bills, and the stocks and funds of the East India and other corporations. A statute of 1697 (8 and 9 Will. III., c. 32), provided that every stock broker and jobber should be licensed by the Court of Aldermen, and thenceforth the legislation concerning the Stock Exchange has gone on increasing to the present day. Mr. Brodhurst has successfully collated the customs of the Stock Exchange, and the various enactments governing the same. It is a book written by one who appears to understand his subject, and will prove very useful to the public as well as to the legal profession.

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*The Law Relating to Factories and Workshops, including Laundries and Docks.* By MAY E. ABRAHAM (Mrs. H. J. Tenant), one of Her Majesty's Superintending Inspectors of Factories, and ARTHUR LLEWELYN DAVIES, of the Inner Temple, Barrister-at-Law. Second Edition. London: Eyre and Spottiswoode. 1897.

It is somewhat uncommon in the Profession to meet with a legal treatise written by a lady, yet such is the book before us. Miss Abraham (now Mrs. Tenant) has written the first portion of the work, and Mr. Davies has added the statutes relating to the subjects, with some annotations. The lady begins with an introduction concerning the changes introduced by the Act of

1895 (58 & 59 Vict., c. 37), "An Act to amend and extend the law relating to Factories and Workshops," but, ladylike, she entirely omits to give the reader the reign and chapter of the Act, or its title either, which we have just supplied. Notwithstanding this, to her, unimportant and vexatious demand, she with considerable pains enumerates the various requirements of the Act in question; and then she passes on to a general view of the Acts referring to the subject, from the year 1878 to the present day. Mr. Davies supplies copies of the various Acts at length, and he does not omit to give the reign, the chapter, and the title of each. But his notes are limited in number, although they appear to be carefully compiled, and to evince complete knowledge of the questions. The book is almost useless to the lawyer, but will serve a very useful purpose as a handbook for government inspectors of factories, and we wish it success.

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*Principles and Practice of the Law of Libel and Slander, with Suggestions on the Conduct of a Civil Action: Forms and Precedents with the Statutes.* By HUGH FRASER, M.A., LL.D., of the Inner Temple and Northern Circuit, Barrister-at-Law. Second Edition. London: William Clowes and Sons, Limited. 1897.

The second edition of this work (first published 1893) is now before us, and in so far as type, paper, printing and binding is concerned, the book is admirably got up and reflects great credit on the publishers. But when we come to a critical examination of the work itself, so pretentious in its Title—"Principles and Practice of the Law of Libel and Slander"—we regret that we cannot recommend it to the Practitioner. The author in his "Article" on Newspaper Reports of Proceedings in Courts of Justice, states, p. 108, that under sect. 3 of the Libel Amendment Act (1888) such reports are "*absolutely* privileged:" "so that no matter how malicious may have been the publication of it no action will lie." This is clearly an erroneous statement of the law; and it would be very unfortunate if it were not so. The privilege conferred by the statute is not *absolute*, but conditional (or qualified), depending—1st, on the fairness and accuracy of the report, and 2ndly that it be published contemporaneously with such proceedings. Moreover, the word "*absolutely*" as applied to the privilege, though contained in the Bill when first before the House of Commons, was struck out in Committee.

The Practitioner will look in vain through the pages of this book for any satisfactory exposition of the leading principles of the law of Libel and Slander in support of the propositions the author puts forward. And there is but very little original matter in the book, many parts of which are composed mainly (apart from extracts from the statute law) of *verbatim* quotations from recent judgments and *nisi prius* rulings, strung together one after the other, in the majority of which the Judge himself was quoting *verbatim*, or nearly so, from the law as laid down by previous authorities, but which is nevertheless put forward by our author as if it were new law; and this, apparently, reveals the superficial character of the author's work. We regret to say that, in our opinion, this edition is no improvement upon the first; it remains as before—a mere skeleton: not a tithe of the law on the subject is to be found in it; the whole, up to the Appendices, being comprised in 206 pages! The Appendices, Statutes and Index occupy another 100 pages, and the entire work consists of only 312 pages.

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*The Workmen's Compensation Act, 1897, with Copious Notes.* By W. ADDINGTON WILLIS, LL.B. (Lond.), of the Inner Temple, Barrister-at-Law. London: Butterworth and Co.; Shaw and Sons. 1897.

Although this Act does not come into force until the 1st of July next, it is most important that its provisions should be studied at a very early date. It casts a liability hitherto undreamt of on employers, while thousands of workmen will be benefited by its provisions. Mr. Willis has dealt with this Statute section by section, adding explanatory notes wherever required. Although a little book it is bound to prove a very useful one, and it is very ably done.

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*Encyclopædia of the Laws of England, being a New Abridgement of the most Eminent Legal Authorities.* Under the general Editorship of A. WOOD RENTON, M.A., LL.B., of Gray's Inn, and of the Oxford Circuit, Barrister-at-Law. Vol. III. London: Sweet and Maxwell, Limited; Edinburgh: William Green and Sons. 1897.

The third volume of this interesting compilation is now before us, and comprises good articles on the "Chiltern Hundreds," by Mr. J. P. Wallis, and on "County Courts," by His Honour

Judge Smyly, Q.C.; also one on the "Cinque Ports," by Sir W. Phillimore, which is not so good as might have been expected from a practitioner in the Admiralty Division.

There is a good article on "Circuits and Assizes," by Mr. G. J. Turner, but we regret to notice a bad mistake under the subject "Clerk of Arraignment," which states that that officer is appointed by the Clerk of Assize, when in fact he is appointed by the Senior Judge going the Circuit. Mr. Oswald, Q.C., M.P., and Mr. P. S. Oswald contribute to "Contempt of Court," but the article lacks that accuracy and finish which we should have expected from the hand of this eminent Q.C., and we fear that press of business has prevented him from settling the draft himself. Mr. G. V. Benson contributes an article on "Coroner," but his remarks on Fire Inquests would have been much more valuable had he studied an article written in this *Magazine* on that subject in May, 1887, and had he referred to the Private Act, subsequently obtained by the City of London, for holding such inquests. However we must not be too critical; it is hard to point out the writer who never commits an error. Without any desire of being invidious, we can also mention favourably the names of Mr. Raleigh, Mr. Manson, Mr. Kenrick, and Sir Courtney Ilbert.

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*Fisher's Law of Mortgage and other Securities upon Property.* By ARTHUR UNDERHILL, M.A., LL.D., of Lincoln's Inn, Barrister-at-Law. Fifth Edition. London: Butterworth and Co. 1897.

There is not much to add to the good reputation already enjoyed by this work. The last edition appeared in 1883, and bore the impress of its talented author. Since then the profession at large has been lacking the use of this favourite book, and we are pleased to find that Mr. Underhill has stepped into the breach and attempted to supply the desideratum. As he says, owing to the numerous decisions on the Bills of Sale Acts, the section on that subject has been of necessity entirely rewritten by him. He has, throughout the whole work, distinguished between the original text and his own additions, and has made many useful alterations. He has had the advantage of much valuable help from other members of the Bar in carrying out a very heavy and laborious task, and the work may be deemed to be thoroughly well performed.

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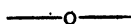
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# THE LAW MAGAZINE AND REVIEW.

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No. CCCIII.—FEBRUARY, 1897.

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## Obiter Dicta.

MR. F. A. STRINGER, writing from the Royal Courts of Justice, suggests that the English form of oath should no longer be adhered to, on the ground that the kissing of the Book causes danger to the person sworn, on account of disease being propagated by contagion. He would ask the Legislature to make the Scotch form of oath, *i.e.*, lifting up the hand, take the place of the English form, power being already given by the Oaths Act, 1888 (51 & 52 Vict., c. 46), to all persons sworn in English Courts to adopt the Scotch form if they please. He says that persons are not aware of this right, as a rule. We should be sorry to see our ancient form of oath disappear. If the only difficulty be in the kissing of the Book, let the kissing be abolished; that would end the difficulty, without more.

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It is by no means certain, however, that the kissing of the Book is of obligation. Sir Sherston Baker, Bart., Recorder of Barnstaple, writing to the *Times* under date of January 2nd, 1897, says:—

Sir,—I am by no means certain that “kissing the Book” is of obligation for witnesses who swear according to the English form. In ancient times a large folio Bible containing the Gospels was placed upon a stand in the view of the prisoner. The jurymen, who occupied a space set apart in the Court, came forward, one by one, and placed their hands upon the

Book, and then the prisoner had a full view of "the peer" who was to try him.

This was called the "corporal oath," because the hand of the person sworn touched the Book.

Probably, out of reverence, the Book may have been kissed sometimes, as a Catholic priest now kisses the Book in the Mass; but I strongly doubt the kiss on the Book to be, or ever to have been, essential to the validity of the corporal oath.

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At the last meeting of the Bar Association of the United States many distinguished speakers advocated the abolition of written instructions to juries; a practice which very seldom obtains in England, although it would appear to be common in the United States.

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By a vote of nine to six the Benchers of the Law Society of Canada have decided not to allow Miss Martin, who had passed her final examination in law, to be called to the Bar, notwithstanding that the Legislature a year before, had passed an Act, allowing women to practise as Barristers conditional on their consent. She can, however, practise as a solicitor. There is one other woman on the books of the Law Society, viz.: Miss Powley, who is studying law at Port Arthur.

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Judge Otis, of Chicago, is of opinion that there is as much crime committed there in one day as there is in all England in three days.

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"Ex-Grand Juror Robert H. Parker," says the *Chicago Legal News* of last December, "was fined 50 dols. for contempt of Court by Judge Hutchinson last Tuesday, and the fine was paid. Parker was held to be in contempt of Court on two counts, and an order was entered upon him in each to shew cause why he should not be punished. It

was held by the Court that Parker was in contempt because of his visit to the grand jury room, after he had been drawn as a juror, and his examination there of the books of the clerk, in reference to a case to come before the jury. The supplemental alleged contempt was Parker's failure to answer the questions propounded to all jurors as to their qualifications to serve. Judge Hutchinson asked if any juror knew anything about any case that was to come before the jury, or knew any reason why he should not be a fit and proper person to serve. Parker made no answer, although it afterwards developed that previous to being sworn, Parker had talked with Mr. Hulin, who was interested in a case that was to come before the October grand jury. Mr. Hulin stated to the Court that Parker's action and conversation about the matter led him to the conclusion that a bribe was being solicited, and Parker said to him, 'Of course you want the man indicted,' with a significant nod of his head. Attorney Gisdell made an argument in defence of Parker, and Assistant State's Attorney Bottum urged that punishment was merited. In passing sentence, Judge Hutchinson said: 'Parker's motives were not, apparently, those of an honest man; his action diminished public confidence in the grand jury system. I shall fine him 50 dols., and he will stand committed until the fine is paid.'

"Judge Hutchinson is entitled to the thanks of every honest man for his action in punishing this grand juror. Lives and property are not safe if either grand or petit jurors can be tampered with. The judges of our Courts have it in their power, largely, to secure better jurors if they will examine them closer as to their qualifications, and punish them for any wilful violation of their duty as jurors. There are a few who hang about the Courts and are sometimes called 'jury fixers.' These animals are wild beasts of the worst kind, for they spare neither life

nor property, if they can reach it through a corrupt juror. They should be exterminated, and, whenever they can be reached, they should be severely punished by the judiciary. Let a war be instituted against jury fixers. They are adroit in avoiding punishment."

---

The new German Civil Code was finally adopted and sanctioned for the whole German Empire on July 2nd, 1896. The first impulse was given to this great work by the Reichstag in 1871, but it was not until 1874 that the Federal Council issued a Commission to arrange the plan and the method of the preparatory work; since then it has made gradual progress in spite of serious difficulties.

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An interesting case in which the "X" rays practically decided the point was tried before Mr. Justice Hawkins and a special jury at the Nottingham Summer Assizes, 1896. Miss Ffolliott, an actress, had injured her foot on leaving the stage, and in consequence brought an action for negligence against the management. At the end of a month, being still unable to resume her avocation, she was sent to University College Hospital, London, where both feet were photographed by the "X" rays. The negatives were shewn in Court, and the difference between the two was convincingly demonstrated to the Judge and jury. There was a displacement of the cuboid bone of the left foot, which shewed at once both the nature and the measure of the injury.

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"Q.C., M.P., tells a true story infinitely full of pathos," says the *Strand Magazine* (June, 1896). "A fortnight ago a letter reached him in the handwriting of an old college friend, telling a pitiful story of a stranded life. The writer had been called to the Bar, hoping some day to land on the

judicial bench, even if he did not reach the Woolsack. He had no influence, and very little money. No business came in his way. But he held on through long years, patiently hoping that some day his chance would come. Now he was sick, probably unto death, and had no money to buy food or medicine. His old friend promptly sent a remittance, which was gratefully acknowledged. At the end of a fortnight it occurred to him that he would call on the sick man and see what more he might do to help him. Arrived at the address, the door was opened by a lady-like woman, still young, pretty in spite of the pinching of poverty. He gave his name and announced his errand. Whereat the lady, bursting into a passion of tears, told him he was too late. Her husband had died that morning. 'Would you like to see him?' she asked, wistfully. The two walked upstairs to a small front room. On the bed lay the body of a man about forty years of age, fully dressed in the wig and gown of a barrister. In his right hand he held a bundle of foolscap. 'What is that?' the old friend whispered. 'That,' said the widow, 'is the only brief he received in the course of nineteen years' waiting. He asked me to dress him thus, and put it in his hand when he was dead.' "

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## I.—INJUNCTIONS TO RESTRAIN LIBELS.

THE Jurisdiction recently held to have been conferred by the Common Law Procedure Act, 1854, empowering a Judge to restrain by Injunction, and even by Interlocutory Injunction, the publication of an alleged libel, on the ground of injury to character and reputation, is a jurisdiction hitherto unknown to the law of England ; and, as it has the effect of striking a serious blow at the



liberty of the Press, it is proposed to examine the Statutes and authorities upon which it is based.

The Jurisdiction in question is said to have been conferred, first by the C. L. P. Act, 1854, and next by the Judicature Act, 1873. Prior to and apart from those Statutes, it is abundantly clear that no such jurisdiction existed, either at Common Law or in Equity.

That the Court has power to grant injunctions to restrain the publication of matter injurious to property, trade, or manufactures, has long been established. The ground upon which such jurisdiction is founded being, in the protection of property; and, therefore, where a publication, whether libellous or not, is calculated to inflict some immediate wrongful and substantial injury to the property or manufactures of the Plaintiff, it may be restrained by interlocutory injunction; but libellous matter, injurious only to character and reputation, is not within the principle of the cases upon which that jurisdiction is founded.

The principle established, by authorities the highest known to the law, is, that the Court may restrain, by injunction, a publication on the ground that it is injurious to property, but not on the ground that it is a libel. Whether libel or not, the Court has no jurisdiction to determine; nor whether, if privileged, it was published maliciously; nor whether, if true, its publication was justifiable; as those are all questions of fact to be found, not by the Court, but by a Jury.

The Court of Chancery had no cognizance of libels unless they were contempts of that Court, as by an abuse of its proceedings.\* The publication of a libel was said, by Lord Chancellor Eldon, to be a crime, and "the Court of Chancery has no jurisdiction to prevent the commission of

\* See per Lord Chancellor Hardwicke, 2 Atkyns 469.

crimes.”\* And it was held in a Scottish case, on appeal to the House of Lords, that a Jury is appointed by Statute as the proper tribunal for the trial of injuries to the person by libel or defamation; and the liberty of the Press consists in the unrestricted right of publishing, subject to the responsibilities attached to the publication of libels, public or private. But if the publication is to be anticipated and prevented by the intervention of the Court, the jurisdiction over libels is taken from the jury, and the right of unrestricted publication is destroyed.†

And it was also held by Lord Langdale, M.R., that the Court of Chancery had no jurisdiction to restrain the publication of libellous advertisements, unless it was shewn that they were injurious to property.‡

Notwithstanding these authorities, it was ruled by Malins, V.-C., in two cases, that although Courts of Equity have no jurisdiction to prevent the commission of acts on the ground merely that they are criminal, yet that they might restrain such as tended to the destruction or to the deterioration of the value of property, whether consisting of money or of *professional reputation*; notwithstanding that they were also of a criminal nature and punishable as a statutable offence.§

In a subsequent case before the Court of Appeal (Lord Cairns, Ch., and James and Mellish, L.JJ.) both those cases were expressly overruled, as being at variance with the settled practice and principles of the Court of Chancery; and it was held, that the Court had no jurisdiction to

\* 2 Swanston 413.

† *Fleming v. Newton*, 1 H.L. Cases 363, 376, per Lord Cottenham, Ch.

‡ *Clark v. Freeman*, 11 Beav. 112; and see *The Emperor of Austria v. Day and Another*, 3 De Gex F. and J. 238, per Lord Campbell, Ch.; and *Mulkern v. Ward*, L.R. 13 Eq. 619, per Wickens, V.-C.

§ *Springhead Spinning Co. v. Riley*, L.R. 6 Eq. 551; *Dixon v. Holden*, L.R. 7 Eq. 488.

restrain the publication of a libel as such, even if it is injurious to property.\*

The decision in the last-mentioned case was in the year 1873. A few years later (1878) Sir Geo. Jessel, M.R., in the case of *Beddow v. Beddow*, 9 Ch. D. 92, expressed the somewhat startling *obiter dictum* that in his opinion jurisdiction was given to the Common Law Courts by the C. L. P. Act, 1854, to grant injunctions to restrain the publication of libels. And, in a subsequent case in the Court of Appeal, before Jessel, M.R., Baggally and Lindley, L.JJ., it was held that the Court has power to restrain by interlocutory injunction the publication of a libel, however "atrocious" it may be, and though injurious only to character and reputation, a jurisdiction (said the learned M.R.) conferred on the Common Law Courts by the Common Law Procedure Act, 1854, and by the Judicature Act, 1873, whereby all jurisdiction which was vested in any of the Courts therein mentioned (including the Common Law Courts) was *transferred* to the High Court of Justice, of which the Chancery Division forms part, and that by section 25, sub-section 8, an injunction may be granted by an interlocutory order of the Court, in all cases in which it shall appear to the Court to be "just or convenient." "That being so" (continues the learned Judge), "in my opinion, having regard to these two Acts of Parliament, I have unlimited power to grant an injunction in any case when it would be right or just to do so, according to settled legal reasons or on any legal settled principle."†

And now let us refer to the sections of the Com. L. P. Act, 1854, which it is said, conferred the jurisdiction in question upon the Courts of Common Law.

By section 79 it was enacted that—"In all cases of breach of contract or other injury, where the party injured

\* *Prudential Assurance Co. v. Knott*, L.R. 10 Ch. App. 142.

† *Quartz Hill Consolidated Gold Mining Co. v. Beall*, 20 Ch. D. 501.

is entitled to maintain and has brought an action, he may in like case and manner as hereinbefore provided with respect to *mandamus*, claim a writ of injunction against the repetition or continuance of such breach of contract or other injury, or the committal of any breach of contract or injury of a like kind arising out of the same contract, or relating to the same property or right; and he may also in the same action include a claim for damages or other redress."

By section 81—"The proceedings in such action shall be the same, as nearly as may be, and subject to the like control, as the proceedings in an action to obtain a *mandamus* under the provisions hereinbefore contained; and in such action judgment may be given that the writ of injunction do or do not issue, as justice may require; and in case of disobedience such writ of injunction may be enforced by attachment by the Court, or when such Courts shall not be sitting, by a Judge."

Section 82 enacted, that it should be lawful for the Plaintiff at any time after the commencement of the action, and whether before or after judgment, to apply *ex parte* to the Court or a Judge for the writ of injunction.

The object of these sections was, to facilitate the mode of proceeding in the Common Law Courts in those cases in which, prior to the C. L. P. Act, it was necessary in order to obtain complete relief, to have recourse to a Court of Equity: so that, where previously to the C. L. P. Act, a Court of Equity had jurisdiction to grant an Injunction a Court of Common Law was thereby empowered to do so. That those enactments were never intended to be used for the purpose of issuing writs of injunction to restrain the publication of libels is obvious, from the fact that no such were ever issued.

Now, if a jurisdiction such as that recently held to have been conferred by the C. L. P. Act, was so conferred,

it is very remarkable that it was never once exercised during the twenty years or more in which that Act was in full operation, by and before the actual framers of it\* (viz.), Sir John Jervis, C.J., Sir Alexander Cockburn (afterwards Chief Justice), Martin and Bramwell (afterwards Barons of the Court of Exchequer) and Willes (afterwards one of the Judges of the Court of Common Pleas), sitting day by day administering the law and procedure under that Act, and yet not a single case is to be found in the books, nor in the Records of any of the Courts, of the granting of an injunction (either interlocutory or otherwise) to restrain the publication of a libel. There are indeed reports of cases which go far to negative the idea of any such extension of jurisdiction beyond that then possessed by the Courts of Equity. Jervis, C.J., said in the case of *Gittins v. Symes*, 24 L.J. C.P. 48 (which was an *ex parte* application under those sections of the Act for an injunction in an action for infringement of a patent):—“On cause being shewn, we can give such directions as a Court of Equity would do.” And Lord Campbell, C.J., said, in the case of *Benson v. Paull*, 2 Jur. N.S. 425, 25 L.J. Q.B. 274, “It could hardly have been the intention of the Legislature to give the Courts of Common Law a jurisdiction much more extensive than the Courts of Equity have ever exercised.” And again, in the same case, “it never could have been the intention to confer a power on the Courts of Common Law which they could not satisfactorily exercise.” So that it appears from these and other decisions, that the intention of the Legislature was, that as regards the operation of those sections of the C. L. P. Act, injunctions should only be granted where a

\* *i.e.*, The Commissioners appointed to inquire into the process, practice, etc., in the Superior Courts at Westminster.

Court of Equity had, previously, jurisdiction to grant such. Therefore, unless a jurisdiction to restrain the publication of libels was actually conferred by the C. L. P. Act, there was, of course, none such to "transfer" by the Judicature Act.

Such a jurisdiction was, however, as already observed, first asserted by the late Sir George Jessel, M.R., in the case *Beddow v. Beddow* (*supra*), then by the same learned Judge, sitting in the Court of Appeal with two Lords Justices, in the *Quartz Hill Mining Case* (*supra*), although no injunction was granted in that case. And in a subsequent case in the Court of Appeal (*Liverpool Household Stores v. Smith*, 37 Ch. D. 170), an application for an injunction to restrain the publication in a newspaper of future articles of a libellous tendency, reflecting on a company, was refused, on the ground of the difficulty of so framing an injunction as not to include non-libellous matter, and because, if granted and disobeyed, the question of libel or no libel would have to be tried on motion to commit (which would be clearly illegal), and because it would be very undesirable to grant an injunction which would restrain the fair discussion, in the newspapers, of matters of public importance, such as the probable success or failure of a public company.

It could not, therefore, be either "just or convenient," within the meaning of the Judicature Act, 1873, to issue an injunction to restrain such a publication.

The judgment in the *Quartz Hill Mining Case* was afterwards followed by the Court of Appeal, under the Presidency of the late Lord Coleridge, C.J., in the case *Bonnard v. Perryman* (1891) 2 Ch. 269, 60 L.J. 617, in which, although no injunction was granted, it was held that "the Court has jurisdiction to restrain by injunction, and even by interlocutory injunction, the publication of a libel," but that the jurisdiction was such "as to require

exceptional caution in its use," and, adopting the language of Lord Esher, M.R., in the case *Coulson v. Coulson*, 3 *Times* L.R. 846, "the jurisdiction is of a *delicate nature*, and should only be exercised in the clearest cases, where if the jury did not find the matter libellous the Court would set aside the verdict as unreasonable." And the Court held it to be wiser in the case before them, "as it generally and in all but exceptional cases must be, to abstain from interference until the trial and determination of the plea of justification."

It appears, therefore, upon perusal of the judgment of the Court in *Bonnard v. Perryman*, that the new jurisdiction there laid down is beset with difficulties—(*inter alia*) that it is such as to require "exceptional caution in its use"—is of a "delicate nature," and "to be exercised only in exceptional cases."

Is not a jurisdiction such as that inconvenient and unconstitutional? Lord Coke says—"Nothing is lawful which is inconvenient." And, "the law, that is the perfection of reason, cannot suffer anything that is inconvenient." And will not this new jurisdiction, as laid down in the above case, be the means of introducing an undesirable and inconvenient degree of uncertainty into the practice and procedure of the Courts?

The cautious language used throughout the judgment in *Bonnard v. Perryman*, is in itself sufficient to throw doubt on the legality of injunctions in actions of libel; added to which the impolicy of granting them is manifest.

A jurisdiction of so delicate a nature as to require exceptional caution in its exercise, must be hazardous and uncertain, or inconvenient and impolitic; and if it be either, it is unconstitutional, and therefore contrary to the fundamental principles of the English Law.

The law of England allows a party libelled, not only the choice of two remedies; one in a civil court, the other in

a criminal court; but he may proceed at the same time, both by action-at-law and by indictment: and although in practice the double remedy is seldom resorted to, any case in which, after action brought, the Defendant persisted in republishing the same or other libellous matter, every such publication being a fresh offence, the proper course, undoubtedly, would be (particularly in such a case as that which Sir George Jessel mentions as "an atrocious libel") to proceed for such second or further publication by indictment; *i.e.*, first by application to a magistrate for a summons, or a warrant to apprehend the offender, who may be committed for trial; when if convicted he may be punished by fine (the amount entirely in the discretion of the Judge) and imprisoned, and may also be required to find sureties for his good behaviour: and such is the recognised practical and constitutional remedy and mode of procedure established by law, and adopted and used for centuries past.

In the case of trivial libels in a newspaper, a Court of Summary Jurisdiction is empowered by the Newspaper Libel and Registration Act, 1881, to convict and fine offenders for such publication, unless they desire to be tried by a jury.

There is, moreover, a further reason why an injunction in libel is an inappropriate and unconstitutional remedy: a Defendant tried and convicted of libel, whether on indictment or criminal information, is entitled to move in arrest of judgment (a right expressly reserved by section 4 of Fox's Libel Act) but of which he is deprived, by the Court issuing a writ of injunction, and thereby usurping the functions of a jury and deciding the case without such a trial. It has now, however, been authoritatively laid down by the Court of Appeal, that a Judge has power to grant injunctions, interlocutory and otherwise, to restrain the publication of libels; but the



caution to be observed in its use is not by any means too strongly expressed in the judgment of the Court; and if observed, the new jurisdiction will probably, sooner or later, become a dead letter, if it has not virtually become so already, on account of the obvious difficulties attending any attempt to enforce obedience to the writ: as may be gathered from the report of a recent case; where the Defendant, after verdict and judgment against him for libel, with heavy damages, continued, persistently, to publish repetitions of the libel, containing charges of fraud, perjury and conspiracy against the Plaintiff; yet the Court, in a subsequent action, refused to grant an injunction, and left the Plaintiff to his more appropriate remedy by indictment.\* Now, if ever there was a case for the exercise of the new jurisdiction it was that one; an injunction was, however, very properly refused, and the Plaintiff left to his legal and constitutional remedy in a Criminal Court.

It was not until after the Judicature Act and the dictum of Sir George Jessel, M.R., in *Beddow v. Beddow*, that libel actions were brought into the Chancery Division. The bringing of such an action in that Division is an erroneous mode of procedure. Actions of libel belong to the Queen's Bench Division; and accordingly, where, in a recent case, the Plaintiff sued, in the Chancery Division, the Editor, Proprietor and Publisher of a Newspaper, in an action of libel, and claimed an interlocutory injunction, the Court refused to entertain the application, and said the action ought, forthwith, to be transferred to the Queen's Bench Division.†

A Defendant, against whom an action of libel is brought, has a right, whatever his defence, to a trial by a jury; and, until the case of the *Quartz Hill Mining Company* and that

\* *Salomons v. Knight* (1891), 2 Ch. 294.

† *Plumbly v. Perryman and Others*, W.N. (1891), p. 64.

of *Bonnard v. Perryman*, no Court, either of law or equity, had any authority, by statute or otherwise, to prejudge the case and issue an injunction to restrain the publication. The issuing of such a writ or order would have been a usurpation of the functions of a jury, an interference with the liberty of the Press, and a disregard of the Libel Act, 32 Geo. III., cap. 60. So long, however, as those decisions of the Court of Appeal remain unreversed, it will always be in the power of any Judge of the High Court to issue an injunction, in any libel action, to restrain the publication; and, on appeal to the Court of Appeal, the Defendant will be met upon the very threshold of that Court with the decision in the case *Bonnard v. Perryman*! There will then remain for him, as his only solace, an appeal to that tribunal of last resort for disappointed suitors—the House of Lords.

H. C. FOLKARD.

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## II.—THE RIGHT OF COUNSEL TO BE INSTRUCTED BY LAY CLIENTS.

AT this epoch of history, the close of the Nineteenth Century, by means of a very determined influence exercised by the seniors of the Bar, the average junior barrister has been taught to believe and now as a rule holds it as part of his creed, that he may not be instructed as counsel for a lay client without the intervention of an intermediary—solicitor or attorney. It is obvious that to a senior barrister doing a large practice, it is most beneficent to observe in all its fulness the so-called obligation of having another man—call him attorney, solicitor, procurator, agent, scrivener or whatever else you like—who will do the inferior work, that is to say, the work of taking the

instructions of the lay client for him, separating the wheat from the chaff, and finally bringing the case, bereft of all unnecessary appendages, to him, the barrister, for the benefit of his learned opinion, or for fight in the Forum. All this, be it remembered, being to the disadvantage of the junior barrister, who might obtain several of the lesser cases, now brought to his more fortunate brother, were that brother more hampered by doing all the inferior work of cases himself, instead of having another man—the intermediary—to do that work for him.

In the middle part of this century, however, the above-mentioned superstition, of the necessity of the employment of an intermediary, met with a well deserved check at the hands of the Court of Queen's Bench, presided over by Lord Campbell, the Chief Justice.

The facts were these. Mr. Justice Patteson, at the Spring Assizes, 1846, for the County of Gloucester, tried a cause of ejectment in which the defendant appeared and pleaded in person; the case being *Doe d. Bennett v. Hale*. Mr. A. Newton, a barrister, appeared as counsel for the defendant, cross-examined the witnesses, and was about to address the jury on behalf of the defendant when the learned Judge inquired of him whether he was instructed by any attorney. Mr. Newton answered in the negative. The Judge thereupon refused to permit him to address the jury, stating that he should confine him to arguing any point of law which might arise. Fortunately for the history of the Bar, although unfortunately for the then defendant, the jury found a verdict for the plaintiff. In Easter Term, 1850, a Rule *Nisi* had been obtained for a new trial of this cause on the ground that the defendant ought to have been allowed to address the jury by his counsel. Mr. Keating shewed cause against the Rule, arguing that the Rule of Common Law was the same in Civil as in Criminal proceedings, *i.e.*, that a party could

only appear in person, that this Rule was first altered by the statute of Westminster II. (13 Edw. I., c. 10) which allowed parties to make general attorneys; but after that time the analogy between Civil and Criminal proceedings ceased, for a prisoner could not be defended by counsel. The party must have advocated his own cause to the jury, the counsel only assisted in arguing points of law. He also referred to 11 Hen. VII., c. 19, authorizing plaintiffs to sue *in formâ pauperis*, which does not allow of a party calling upon a counsel to act except through the intervention of an attorney, for it expressly gives the pauper the services of an attorney as well as of counsel gratuitously. He also referred to the then County Courts Act (9 & 10 Vict., c. 95), by sect. 91 of which it was provided that a barrister in a County Court must be instructed by an attorney. He admitted, however, that in criminal trials a prisoner had always been allowed to have himself defended by counsel, without the intervention of an attorney.

Mr. A. Newton, in support of the Rule, argued that the practice in criminal matters was conclusive, for the only question was whether there be any rule of law prohibiting a counsel from appearing without an attorney. A counsel might appear without a fee, for that was a matter entirely for his own consideration. It is not optional with a counsel to receive a brief, or not, if offered. The etiquette of the Bar alone could be relied on to prevent fees, less than those sanctioned by usage, being taken. In Equity Courts it is understood that the practice exists of taking briefs without the intervention of a solicitor, why then should not the same liberty prevail at Law? In the House of Lords it is the practice to allow persons who are not attorneys to conduct the business, there being an express Order that the parties be heard by themselves, their counsel, attorneys, or *agents*. In the Privy Council the

practice is to allow others to conduct appeals besides the party or his proctor.

Judgment was delivered by Lord Campbell, Chief Justice, on behalf of the Court. The names of the Judges who sat during the Easter Term were, besides the Chief Justice, Mr. Justice Patteson, Mr. Justice Wightman, and Mr. Justice Erle. They were probably all present. The judgment was as follows :—

“In this case we are called upon to consider whether in the Superior Courts there be a rule of law which prevents a defendant in a Civil suit, who has appeared to the process in person, from having in the stages of the suit in which counsel, if regularly instructed by an attorney, might assist him, the assistance of counsel instructed by himself without an attorney. There certainly has been an understanding in the profession that a barrister ought not to accept a brief in a Civil suit except from an attorney; and I believe that it is for the benefit of the suitors and for the satisfactory administration of justice that this understanding should be generally acted upon; but we are of opinion that there is no rule of law by which it can be enforced. The only statutable provision upon the subject is by the late County Courts Act (9 & 10 Vict., c. 95, s. 91), which enacts that a barrister shall not be entitled to appear in any of the said Courts unless he be instructed by an attorney. The statute of Westminster I., allowing an appearance by attorney, the statute 7 Will. III., c. 3, allowing in cases of treason a full defence by two counsels, and the statute 6 & 7 Will. IV., c. 114, allowing a full defence by counsel in all cases of felony, are silent as to the manner in which counsel are to be instructed. This being a matter of procedure, the Judges, of their own authority, might, according to their view of what was fit, have laid down a general rule determining under what conditions and restrictions barristers should be permitted to plead and have pre-audience before them, but no such Rule is to be found. The alleged restriction, therefore, must depend upon usage, from which it might be inferred that such a rule had been promulgated, although not now extant in writing. In Criminal Courts, it is conceded that the practice for a barrister not to plead unless instructed by an attorney, does not prevail, and we all know instances in which, with the sanction and at the suggestion of Judges, barristers

have defended prisoners without the intervention of an attorney.

"There would be a great difficulty in drawing a strict distinction for this purpose between Civil and Criminal proceedings, and between Civil and Criminal Courts. The obligation upon the owner of land to repair a highway may be tried upon an indictment; and a man may be charged with an offence in the shape of an action to recover a penalty. On the Circuit, we familiarly talk of the Crown side and of the Civil side; but questions respecting insolvent debtors used to be discussed and determined in the Crown Court, and at Nisi Prius there are tried not only cases of *mandamus* and *quo warranto*, but criminal informations and indictments for misdemeanours. Even an indictment for the crime of murder may be removed into this Court by *certiorari*, and tried at Nisi Prius.

"In strictly Civil suits the usage has not been invariably uniform, as we must presume it would have been had it been regulated by a law which as propounded admits of no exceptions. Instances have been mentioned to us in which counsel of great eminence and high honour have thought that from peculiar circumstances they were justified, with or without a fee, in holding a brief delivered to them by the party without any attorney being employed. There is no decided case which can assist us, for in *The King v. Sir Francis Burdett*, and *Moscato v. Lawson* (7 Car. & P. 32), the question was not respecting the intervention of an attorney, but whether if a party conducts the trial himself as his own counsel, he may likewise have the assistance of counsel to argue questions of law, and to examine witnesses. If immemorial usage be relied upon, we must remember that sergeants-countors and other counsel existed in England long before the time of Edward I., and there seems every reason to believe that they communicated directly with the parties. Chaucer speaks of—

" 'A serjeant-at-law wary and wise  
That oft had been at the Parvise.'

"The Parvise is well known to have been a sort of exchange at St. Paul's, where all ranks met to do business, and the serjeants-at-law, like Roman patrons, gave advice to all that came to consult them. Afterwards, each serjeant-at-law had a pillar in the Cathedral assigned to him, where he stood and communicated

with his clients. The advantage to be derived from sub-dividing the business of conducting a suit, and having two orders in the profession of the law between whom it should be distributed, became more and more felt; but for a long time the attorney only sued out process, and did what was necessary in the offices of the Court for bringing the cause to trial and for having execution on the judgment. I highly approve of the demarcation finally drawn between the functions of the attorney and those of the counsel, and I believe that the intervention of the attorney between the counsel and the party has greatly contributed not only to the dignity of the Bar, but to the improvement of English jurisprudence. I revert to the practice of former ages only for the purpose of shewing that the onus here does not lie upon the defendant to vouch an Act of Parliament, or rule of Court, or decision to support the privilege which he claims.

"I am by no means insensible of the inconvenience which may arise from this privilege being judicially recognized. But I do earnestly trust that it will not alter the almost uniform usage which has prevailed upon the subject for more than a century, and that the interference of the Judges to rectify any abuse of it will not be necessary. Exceptional cases may again occur, though very rarely, when it may be fit for barristers to plead in Civil suits instructed only by the parties, but they may continue generally to adhere to what has been considered the etiquette of the Bar, for although ever ready to render their best assistance for the discovery of truth and the vindication of right, they are at liberty, under the control of the Courts, to lay down conditions upon which, for the public good, their services are to be obtained.

"Nor can that highly honourable and useful branch of the profession, the attorneys, be prejudiced by this decision, for it would be penal for any class of men to perform any of the functions which properly belong to an attorney; and their intermediary agency between the parties and the counsel, so conducive to the due administration of justice, will, I hope, remain unimpaired. At any rate, we can at present only look to see how the law is, leaving any inconvenience which may be produced by it to be remedied by the authority of the Judges or of the legislature.

"Upon the whole, we are of opinion that the Rule for a new trial ought to be made absolute."

The Rule therefore was made absolute.\* It should also be mentioned that, in the course of the arguments, Mr. Justice Erle explained that "counsel" formerly meant a friend retained to conduct the suit, adding that "perhaps he only escaped the penalties of maintenance by being paid for his services."

It is interesting to notice that sect. 91 of the County Courts Act, mentioned in the above judgment, which prohibited a barrister from appearing in a County Court unless instructed by an attorney, was repealed by sect. 10 of 15 & 16 Vict. at the instance of the late Lord Brougham, and it is thereby enacted that "a barrister *retained by* or on behalf of *the party* on either side" may address the Court, subject to such regulations as the Judge may from time to time prescribe for the orderly transaction of the business of the Court. And this Rule has been continued in County Court Acts to the present day.

Mr. Serjeant Manning has written the following note on the above case of *Doe d. Bennett v. Hale* :—

"Before the statute of Westminster II. (1 stat. 13 E. 1), c. 10, plaintiffs and defendants were bound to appear in person unless authorized, by the King's writ of *dedimus potestatem de attorney faciendo*, to substitute an attorney. Once before the Court they were at liberty to avail themselves of the assistance of a countor (pleader) who might stand by them, advise with them, and speak for them. In the King's Court of Common Law, though it was otherwise in the Ecclesiastical Courts, the countor could only be a person of a particular class, selected by the Crown *ad serviendum ad legem*, in administering justice as judges of the Courts of King's Bench and Common Pleas, and as justices of assize: or, when not so employed by the Crown, in assisting those suitors who were too ignorant of the law or too little acquainted with the (*French*) language in which the proceedings were carried on, to conduct their own cases.

"But, when a general power to appear by attorney, had in 1285, been given by stat. Westminster II. (1 stat. 13 E. 1), c. 10,

\* 15 Q.B. (Adolp. & Ell., New Series) 171; s.c. 19 L.J. (Q.B.) 353.



and all persons were at liberty to appoint either *general* attorneys or attorneys *ad lucrandum vel perdendum* in a particular cause, it was thought expedient to restrict the appointment to persons presumed to be acquainted with the common law. The course of preparation for the degree of the coif was:—first, to pass some time in an inn of chancery, then to enter at an inn of court, and then to proceed through the degrees of inner barrister and outer barrister to that of apprentice at law, from which latter class the serjeants were chosen.

“The serjeants were bound to attend the sittings of the *Magnus Bancus* (the Court of Common Pleas); and, as that Court had become stationary, whilst the Chancery, the King’s Bench and the Exchequer still followed the person of the King, it was considered desirable that these Courts should have the assistance of advocates who had not yet been called upon to take the degree of the coif. A measure was resorted to for providing for both these wants. An order was made in Parliament in 1292 (1 Rot. Parl. 84 b.), entituled ‘*de attornatis et apprenticiis*,’ by which the justices of the Common Pleas were required to appoint a certain number *de quolibet comitatu, de melioribus et legalioribus et libentiùs addiscentibus*, to attend the Courts, great complaints having been made in Parliament of causes being lost for want of serjeants (*par defeaute de serjeantie*); 1 Rot. Parl. 4 a; 2 Rot. Parl. 140 a, b; Mann. *Serviens ad Legem*, 268. From this period, apprentices at law enjoyed the double privilege of appearing as attorneys for suitors in all the common law Courts, and of acting as advocates in those Courts in which serjeants did not regularly attend. Thus, in the 11 Ed. III. (2 Rot. Parl. 96 b; Mann. *Serv. ad Legem*, 188), John de Codyngton, an apprentice and attorney, was discharged by the council from a command of the Lord Admiral to appear at *Orewell* armed and apparelled as a man at arms. Afterwards persons were admitted to practice as attorneys who had not taken the degree of apprentice at law; and utter barristers were allowed to appear as advocates in the itinerant Courts without qualifying themselves to act as attorneys, within the Order of 1292, by taking the degree of apprentice. Of late years students (inner barristers), being certified special pleaders, have been allowed to act as advocates at the Judge’s chambers.

“At common law, the serjeant could seldom receive his instructions through an attorney; and, after the making of the

Order of 1292, although in the Common Pleas a serjeant might be instructed by an attorney, yet in other Courts the apprentice attorney would have no one to instruct but himself; until the separation of the two functions, which now generally prevails, had taken place; a separation which does, however, exist in the proceedings of many Inferior Courts, and which has been discontinued in the case of the Crown, the King's Attorney-General no longer instructing and assisting the King's serjeants, but conducting the King's business himself."

Sir Patrick Colquhoun, writing about the same date (1854) as the above judgment of Lord Campbell, says ("Roman Civil Law," Vol. iii., p. 317):—"One of the *advocati* who were accustomed to frequent the Forum in more recent times, was usually requested to demand the action for the actor; but it is probable that at an earlier period the client first applied to his patron, in order to obtain his opinion on the case, and to secure his services in the suit, which would in England be called 'retaining counsel.' It was, however, the custom in Rome, for the patrons to pace up and down the Forum during the period at which the Court sat, which was four o'clock by the Roman, equivalent to about nine o'clock of our computation:—

" Ventum erat ad Vestæ quarta jam parte diei,  
Præterita; et casu tunc respondere vadato  
Debebat, quod ni fecisset perdere litem,\*

in order to be consulted by their clients, and such others as required their aid and advice.

"In like manner, the serjeants used to assemble in St. Paul's to be consulted by their clients in the City of London; and even at the present time a pillar in the Cathedral is assigned to a serjeant on his creation; for the very convenient practice of retaining counsel through the intervention of attorneys is of a comparatively modern

\* Hor. Sat. I., 9, Verse 35.

*date*—perhaps of not more than one hundred years back—since formerly no one was allowed to employ an attorney or agent who could appear in person, and then only by leave of the Court; a trace of this practice is observable in the ‘calling the plaintiff,’ in cases of nonsuit. . . . Although the intervention of an agent is in a great number of cases unnecessary, it is judged inconvenient to depart from the general rule in particular instances; hence the etiquette of the superior branch of the legal profession admits but three exceptions: when the client wishes to consult counsel upon the conduct of his attorney, because it is not judged advisable that another attorney should intervene in so delicate an affair; in the case of the drawing up of wills, because the client may wish to confide his future intentions to as few persons as possible; and in the case of the defence of persons under indictment for criminal offences because, being for the most part indigent persons, it is not considered just to expose them to the additional expense of employing an attorney. The same reasons are probably applicable to cases in the Inferior Court, but this has as yet hardly become a settled practice.”

The reader will notice that at the time when the above-mentioned judgment was delivered, and when Sir Patrick Colquhoun wrote, the intervention of an attorney or agent was by no means fully recognized; the practice of this intervention had been struggling for an existence for about a hundred years before that time, and was looked upon rather as a *convenience* than as an *obligation*. Sir Patrick Colquhoun, whilst adopting the extreme view of the desirability of the intervention, is nevertheless forced to admit that there are three important cases in which such intervention cannot be tolerated; and he further admits that the practice of intervention is comparatively speaking new, and unsupported by any legal enactment.

Mr. Serjeant Pulling ("Order of the Coif," p. 2) says : "The Brothers of the Coif (serjeants) devoted to the profession of the law, bound by a solemn oath to give counsel and legal aid to the king's people, were for ages to be found at their ancient rendezvous in St. Paul's Cathedral, the *Parvis*, or their allotted pillar there, wearing their distinctive costume, the robe and the coif, ever ready to receive those who sought their assistance, to give counsel *pur son donant* to the rich, and gratis to the poor suitor, and to aid when called on in the judicial business of the king's courts." And again (p. 160), "the Round of the Temple Church like the *Parvis* of St. Paul's was for ages professionally resorted to and used both by students and practitioners of the law." These legal meetings are referred to by Ben Jonson in the "Alchemist," and by Samuel Butler in "Hudibras," part 3, c. 3. Other instances could doubtless be found with a little research.

And such is the law at the present day. Barristers, *i.e.*, apprentices of the law, have succeeded to the privileges of the serjeants, but the powers of the Bar have not been restrained by any statute. They are the same now as they ever were. And although it may be urged that it is convenient for the rich suitor to have the use of the intermediary, to act as his agent, and for counsel in large practice to have the intermediary to perform the less dignified work for them, so as to render their own work shorter with regard to each case, and thereby to enable them to accept a larger number of cases and a proportionately larger number of fees, yet it should not be forgotten that many suitors are very poor, and that it is a matter of no little moment to them to be able to carry on a lawsuit, a prosecution, or a defence, without the expense of an intermediary. This the law allows them to do; this the law permits barristers to undertake. Without disparaging the utility of attorneys, or solicitors, and their bills of costs, it

nevertheless is desirable that the superstition of the necessity of employing an intermediary should be removed, and that the Bar—especially the junior Bar—should be fully cognizant of their rights. The fusion of the duties of barrister, attorney, solicitor, and notary public in one person, in many of our colonies and in the United States, testifies largely to the opinion of those of our own kith and kin as to the undesirability of the employment of intermediaries. What would be said if a medical man could alone be approached by his patient through a chemist and druggist? or a clergyman through the parish clerk?

JUNIUS.

### III.—DANTE AS A JURIST.

THIS title is of course not meant to imply that Dante was actually a lawyer by training or profession, like Ariosto or Tasso, but that like some other great poets he did not disdain the aid of law as an adjunct to poetry.\* There is a side of Dante's character specially interesting to lawyers. He was a master of all the learning of his time—one of the *semipoeta*, to use Filippo Villani's phrase—and law had not escaped him. None of his biographers specially name law among the subjects of his study, but Boccaccio tells us that he became wonderfully skilled in the liberal arts, and in Italy in the thirteenth and fourteenth centuries there is not much doubt that law

\* A conspicuous instance of this is Lucretius' magnificent line:

*Vitaque mancipio nulli datur, omnibus usu.*

Many other instances will readily suggest themselves to the student of poetry. As the Portuguese poet says,

*Não fazem damno às Musas os doutores,  
Antes ajuda a suas letras ddo.*

would be included under liberal arts. This, however, is not important, as it is by his works that he is to be judged. His opportunities for the study were undoubted. His father and his master Brunetto Latini were notaries. He spent, as will appear later, some time at Bologna, the *alma studiorum mater*, the home of legal learning, and was an intimate friend of Cino da Pistoia, one of the leading jurists of the period.

His knowledge of law shews itself in two main directions—in phraseology and in argument. But he was at the same time something more than a poet with a legal training. Like all noble natures he was as strong a lover of justice as von Ihering himself, and would probably have agreed with the latter that *der Kampf um's Recht ist die Poesie des Charakters*.\* The sense of justice is one of the most conspicuous things in his writings,† and one can in this place only name a small number of passages in illustration of what will be obvious to all students of Dante.‡

The subject of Dante as a jurist seems not to have been touched in any English book known to the writer, though Italian and German assiduity has done to a limited extent (as will appear later) what has been done more fully in the case of Shakespeare in England, Germany, and

\* "Der Kampf um's Recht," p. 41.

† It is especially insisted on by Dr. Moore: "Dante and His Early Biographers," p. 256.

‡ He says himself (Epist. x., 8), that the relation of man to justice is the allegorical subject of the "Divina Commedia." The last book of the *Convito* (never written) was to have had justice for its theme. Noticeable passages in the "Divina Commedia" are that the Creator of the gates of hell was moved by justice, *Giustizia mosse il mio alto fattore* (Inf. iii., 4); it inspired Justinian, *la viva giustizia che mi spira* (Par. vi., 88); and in the planet Jupiter the spirits of the blest arrange themselves so as to form the verse *Diligite justitiam qui judicatis terram* (Par. xviii., 78). The lofty position of justice is explained by its being the servant of God;

*la ministra*

*Dell' altro Sire, infallibil giustizia.* (Inf. xxix., 55.)

Italy.\* If the writer have been forestalled in England or America, he can only plead in Dante's own words, *questo intendo, non come buono fabbricatore, ma come seguatore di quello, fare in questa parte*.† It is noticeable that some of the editors and translators of Dante have been lawyers, e.g., Dr. F. Scolari in Italy, Sir W. F. Pollock and Mr. Warburton Pike in England.

It will be convenient to divide the subject into five heads, dealing at first chiefly with the "Divina Commedia," and leaving the other works for subsequent consideration. It might *primâ facie* be expected that one of the heads would be similes, but it is remarkable that not one simile is taken from the practice of the Courts, and there are only five which in the most remote way connect themselves with the present subject.‡

(1.) *Bologna*.—In the days of Dante Bologna was the centre of the legal learning of the western world. The stream of the juristic productions of the great glossators,§ post-glossators, and scribes had not yet ceased to flow. Among the jurists of the time who wrote or taught in the Archiginnasio of Bologna or in neighbouring cities were Accursius (died 1294), Guittoncino Sinibuldi (better known as Cino da Pistoia), who died in 1336, and Baldus, who

\* Rushton, "Shakespeare as a Lawyer" (1858); Lord Campbell, "Shakespeare's Legal Acquirements" (1859); Forlani, "La Lotta per il Diritto; Variazioni filosofico-giuridiche sopra il mercatante di Venezia e altri drammi" (Turin, 1874); Kohler, "Shakespeare vor der Forum der Jurisprudenz" (Würzburg, 1883).

† Convito, iv., 30.

‡ These are Inf. xix., 60 (those who stand at a loss for a reply); Par. xvii., 103 (one who asks counsel); xxiv., 45 (the bachelor who is ready but does not speak until the master proposes the question). The first and last of these may be reminiscences of Bologna disputations. In addition there is the simile of Themis, Purg. xxxiii., 47, and of the friar shriving for murder, Inf. xix., 49.

§ The words *chiosa* and *chiosar* are familiar to Dante (Inf. xv., 89; Purg. xi., 141; xx., 99; Par. xvii., 94).

taught at Pisa and Perugia, and died in 1357. Less known, but eminent in their way, were Dinus (died 1303), Jacobus de Belvisio (died 1335), Johannes Andreae, the eminent canonist, who drafted the statutes of the University of Bologna in 1317 (died 1348),\* and Francesco da Barberino, the first person to receive the degree of Doctor of Laws at Florence.† Of these names, by far the most interesting is Cino or Cinus, whose *Lectura super Codicem* and Commentary on the Statutes of Pistoia won a place for him among jurists no lower than did his sonnet praise of Selvaggia among poets. He is not named in the "Divina Commedia," but his name occurs frequently in the "De Vulgari Eloquentia," and there was a correspondence in sonnets between him and Dante, not in any way touching the subject of the law.‡ In his sonnets not addressed to Dante he, however, often combines very happily his poetical and legal powers. Take, for instance, two sonnets, one on the Court of Reason and one on Rome. (The translations are my own.)

#### THE COURT OF REASON.

A thousand doubts and pleadings in a day  
 Are filed in Empress Reason's court supreme  
 By angry Love—his eyes with anger gleam.  
 "Which of us twain hath been more faithful, say,  
 'Tis all through me that Cino can display  
 The sail of fame on life's unhappy stream."  
 "Thee," quoth I, "root of all my woe I deem,  
 I found what gall beneath thy sweetness lay."  
 Then he: "Ah, traitorous and truant slave!  
 Are these the thanks thou renderest, ingrate,  
 For giving thee a maid without a peer?"

\* He is cited as an authority by our English Lyndewood.

† In France the poet-lawyer Beaumanoir was a contemporary. He died in 1300.

‡ Petrarch in his sonnet on Cino's death does not refer to him as a jurist. Nor does he in the sonnet in which he names Dante and Cino together (*In Morte de M. Laura*, xix.).



"Thy left," cried I, "slew what thy right hand gave."  
 "Not so," said he. The judge: "Your wrath abate.  
 I must have time to give sound judgment here."\*

## TO ROME.

Tell me, proud Rome, why dost these edicts read,  
 These many laws by prince or people made,  
 Or answers by the prudent duly weighed,  
 When now thou canst the world no longer lead?  
 Thou readest, sad one, of each ancient deed  
 Where thy unconquered sons their might displayed,  
 Afric and Egypt at thy feet were laid,  
 But slavery not rule is now thy meed.  
 What boots it that thou wast of old a queen,  
 And over foreign nations heldest rein,  
 If thou and all thy fame no more exist?  
 Forgive me, God, if all my days have been  
 Devoted to man's laws, unjust and vain  
 Unless Thy law within the heart be fixed.

It is worth noticing that in the *Trionfo d' Amore* Petrarch couples the names of Dante and Cino, Beatrice and Selvaggia.† Another interesting name is that of Johannes de Virgilio, to whom Dante addresses two Eclogues. In the first he alludes to the unpoetic labour

\* This sonnet was imitated by Petrarch at the conclusion of the Canzone, *Quell' antico mio dolce empio signore*. It is an example of a style of verse very common in mediæval poetry. There are court scenes in "Reynard the Fox" and in "Piers Plowman." In Gerson's *Traité contre le Roumant de la Rose* (written in 1402) the author feigns that he is in a Christian Court, presided over by the Lady Canonical Justice and her assessors Mercy and Truth; Chastity is the plaintiff, the amorous fool or foolish lover (*le fol amoureux*) the defendant. In Gavin Douglas' "Palace of Honour" the poet is put on his trial before the Court of Venus for a libellous poem and pleads to the jurisdiction that (a) ladies may not be judges; (b) the defendant, being a clerk, is not amenable to a lay tribunal. Many other instances will suggest themselves to those acquainted with the early poetry of Western Europe. The writer hopes at some time to pursue this subject further.

† *Ecco Dante e Beatrice; ecco Selvaggia;*

*Ecco Cino da Pistoia.*

Cap. iv., 31.

of the jurists of Bologna.\* Other persons connected with Bologna and named by Dante are Franco Bolognese, the miniature painter,† Guido Guinicelli,‡ Pier delle Vigne,§ Accursius,|| Venedico Caccianimico,¶ and Grätian.\*\* The geography of Bologna was well known to Dante, as one might expect when one knows that he resided there probably for two periods of his life, once as a student and once as an exile. The date of the first residence cannot be fixed, that of the second is placed by Scartazzini between 1304 and 1306. Bologna is frequently referred to in the "Divina Commedia" and other works, especially the "De Vulgari Eloquentia," sometimes by name,†† sometimes by implication. He knows the leaning tower of Carisenda, to which he compares Antæus,‡‡ the Salsa—according to one interpretation—a valley near Bologna where the bodies of suicides were cast away,§§ and the *frati godenti*,||| called from Bologna in 1266 to rule Florence; the institution of the *arti* is attributed to them by G. Villani. The word *sipa*¶¶ also shews an intimate knowledge of the Bolognese dialect, as does the discussion on the dialect in the "De Vulgari Eloquentia."

\* *Montibus Aoniis Mopsus, Melibæe, quotannis*

*Dum satagunt alii causarum iura doceri*

*Se dedit.*

Ecl. i., 28.

Dante apparently would not have agreed with the English writer.

*Sat Galienis opes et sancti Justiniani.*

T. Wright, "Political Songs," 210.

† Purg. xi., 83.

‡ Purg. xxi., 92.

§ Inf. xiii., 58.

|| Inf. xv., 110.

¶ Inf. xviii., 50.

\*\* Par. x., 104.

†† *Bologna*, Inf. xxiii., 145; Purg. xiv., 199. *Bolognese*, Inf. xviii., 58; xxiii., 103.

‡‡ Inf. xxxi., 136.

§§ Inf. xviii., 51.

||| Inf. xxiii., 103.

¶¶ Inf. xviii., 61. This was a peculiar dialectic use of the affirmative, no longer in use. It is said to be connected with *sia* and not *si*. Ferrari in his *Vocabolario Bolognese* says that Bologna ought rather to be called *la città del brisa*, a form of the negative particle equivalent to the more usual *punto*.

Other University cities visited by Dante were Padua, Perugia, and Siena, and in all these a faculty of law, more or less flourishing, existed.\* The University of Pisa was not founded till 1346, a quarter of a century after his death. The principal name connected with the early legal history of Perugia is Bartolus. His life just overlapped Dante's (he was born in 1314), and he was a pupil of Cino's. It is therefore possible that he may have seen Dante when he was quite a child.†

(2.) *Lawyers*.—The number of those connected with the law, whom Dante names in the "*Divina Commedia*," is considerable. The earliest and the greatest is Justinian, the hero of one of the noblest cantos in the *Paradiso*,‡ the more immediately legal part of which may be Englished thus :

Since Constantine turned back the eagle's flight  
 Against the course of heaven, the which of old  
 It followed from Lavinia won by might,  
 Two hundred years and years beside have rolled ;  
 On Europe's limit paused the bird divine  
 Nigh to the hills that still its birthplace hold ;  
 The shadow of its wings did it incline  
 Throughout the world until, from hand to hand  
 Succeeding, at the last it came to mine.  
 Cæsar I was, and now Justinian stand,  
 And primal love so urged me that to clear  
 The laws of bale and bulk I gave command.  
 When first the mighty work I 'gan uprear,  
 One nature in the Christ I deemed, no more,  
 o In that belief contented and sincere.  
 But blessed Agapetus with his lore  
 (Chief shepherd he) to faith more excellent  
 Converted me from all the sin of yore.

\* See the various Dante itineraries, such as Enrico Croce's, and monographs such as A. Gloria, *Dante e Padova* (Padua, 1865), B. Acquarone, *Dante in Siena* (Siena, 1865).

† Bartolus was not technically a glossator, in spite of the well-known song of the German Commersbuch, *Der Bartolus Glossator*.

‡ Canto vi. ; he is also named in *Purg.* vi., 89, and in *Canzone* xviii., 37.

Him I believed and that his argument  
 Now see I clearly, just as thou dost see  
 In contradiction truth and falsehood blent.  
 Then soon as with the Church I bowed the knee,  
 I was inspired, for so it pleased God's grace,  
 With that high task whereto I girded me.  
 In arms to Belisarius gave I place,  
 'Twas sign that I must rest what time I marked  
 Heaven grasping his right hand in close embrace.

Next in interest is Dante's master, Brunetto Latini or Latino. Like Dante's father he was a notary, and his pride in his profession is proved by the well-known story that when he had prepared a document which was held to be invalid for want of form, he preferred to be thought guilty of fraud rather than wanting in skill. He is thrice named in the "*Divina Commedia*"\* and appears as Brunetus Florentinus in the "*De Vulgari Eloquentia*."† In two of the three places where he is named in the "*Divina Commedia*" he has the epithet of *Ser*, the title of a jurist, applied to him by the poet. In the *Trésor*, his French prose work, he has some discussions of legal interest, e.g., the election of kings and emperors, the government of a town, the king and his council, how a king ought to honour ambassadors, the trial of accused persons. In the *Tesoretto*, his Italian work in verse, he especially condemns the crime for which he suffered in the *Inferno*.‡ The simile with which Dante parts with him is one of the most beautiful in the poem.§

\* All in *Inf.* xv.

† i., 13.

‡ *Ma tra questi peccati  
 Son via più condannati  
 Que' che son Sodomitati.  
 Deh ! Come son periti  
 Quei che contra natura  
 Brigati con tal lussuria !*

§ *Poi si rivolse, e parve di coloro  
 Che corrono a Verona il drappo verde  
 Per la campagna ; e parve di costoro  
 Quegli che vince e non colui che perde.*—(*Inf.* xv., 121.)

There are many other names more or less famous in the history of law. The foremost is S. Thomas Aquinas, whose definition of law, as will be seen later, was accepted by Dante, though the argument of his *De Regimine Principum* was not. He is alluded to very frequently, and it is not too much to say that a great part of the argument of the *Paradiso* is little more than a versification of S. Thomas. The principal civilian is Franciscus Accursius, or Francesco d' Accorso, the most eminent of an eminent family of jurists, and interesting to Englishmen from his having been one of the *Secretarii Regis* of Edward I. in 1278.\* Canonists are represented by Isidore of Seville† and Gratian, the monk of Bologna and the compiler of the *Decretum*.‡ Among jurists of smaller note are Petrus de Vineia or Pier delle Vigne, the Chancellor of Frederic II.,§ Lapo Saltarello,|| Taddeo,¶ and Bonagiunta.\*\* Oriental law is represented by Averroes†† and his first translator, Michael Scott.‡‡ In addition to these, there are others alluded to but not expressly named. They begin with Moses, who is *il legista* par excellence,§§

\* Inf. xv., 110. He had free quarters in the Beaumont Palace at Oxford (Rashdall, "Hist. of the Universities of Europe," ii., 460, from Twyne's MS.),

† Par. x., 131.

‡ Par. x., 104.

§ Inf. xiii., 158.

|| Par. xv., 128. He is not to be confounded with the more famous Lapo Gianni named in the sonnet to Guido Cavalcanti.

¶ Par. xii., 83. Taddeo is said to have been a jurist, but he was more probably Taddeo d' Alderotto, a physician of Bologna and the translator of Aristotle's *Ethics*. (See *Convito*, i., 10.)

\*\* Purg. xxiv., 19; *De Vulg. El.*, i., 13, where he is alluded to with some contempt. Possibly his law, rather than his literary power, was his strong point.

†† Inf. iv., 144. The legal treatises written by Averroes (Ibn Rasch) are enumerated by Renan, *Averroes* (2nd ed., 1861, p. 73). The main one appears to have been an abridgment of Al Ghazzali's *Al-Mustasfa*. The etymology of Averroes from *a* and *veritas* (quasi *sensu veritatis*) will hardly hold water, although it is the invention of as good a Dante scholar as Benvenuto da Imola.

‡‡ Inf. xx., 116. Like Pier delle Vigne, he was one of the Court of Frederic II.

§§ Inf. iv., 57.

and those hinted at under the legal titles of *notaio*,\* *avvocato*,† *giudice non gentil*,‡ and the geographical titles of *Ostiense*§ and *Aretino*.||

(3.) *Legal terms*.—This is rather a difficult subject to arrange, as many terms, in strictness legal in their meaning, are, as in English, often applied in a general sense; for example, *arra* (in the sense of prediction), *chiosa*, *debito*, *diritto*,¶ *digesto*, *disigillarsi*, *disfrancare*, *editto*, *eterna legge*, *infamia*, *indizio*,\*\* *masnada*,†† *prefetto nel foro divino*, *reda*, *retaggio*, *reo*, *rio*, *testimonio*. Among technical words of law calling for no special notice are: *arra*, *bando*, *cancellare*, *chiosa*, *colpa*, *comento*, *concistoro*,‡‡ *consistoro*, *contumacia*, *convenanza*, *convegno*, *corte*, *costume*, *danno*,§§ *dannato*, *decreto*, *decretali*, *divieto*, *diritto*, *dispensare*, *drittura*, *duolo*,||| *editto*,

\* The poet lawyer, Jacopo da Lentino; *Purg.* xxiv., 56.

† *L'avvocato de' tempi cristiani*, *Par.* x., 119, may be either Orosius, the author of *Historia adversus Paganos*, or St. Ambrose, the reputed author of *Mosaicarum et Romanarum Legum Collatio*.

‡ Another and perhaps better reading is *Giudice Nin Gentil*, *Purg.* viii., 53. In either case the allusion is to Nino Visconti, the Governor of the Pisan possessions in the island of Sardinia.

§ *Par.* xii., 83. The allusion is to Enrico da Susa, Cardinal of Ostia, a commentator on the Canon Law. Students of that law were said *Ostiensem sequi*. See *Epist.* viii., 7, *Ostiensem declamant*.

|| Benincasa da Arezzo.

¶ *Dritto* is always strictly legal in its meaning, as in *Purg.* v., 78.

\*\* As a term of the law of evidence, the word is generally in the plural, but in Dante is always in the singular.

†† Almost equivalent to the old English law term *manupast*, those who ate at a man's table, but used by Dante as meaning simply a number of persons, *Inf.* xv., 41; *Purg.* ii., 130.

‡‡ Used figuratively in *Convito* iv., 5, *quell' altissimo e congiuntissimo consistorio della Trinità*. "Consistorie" is similarly used in a figurative sense in *Piers Plowman's* "Vision of the Last Judgment."

§§ Note that the elements of actionability under the *Lex Aquilia* (*damnum, culpa, injuria*) often occur in the "Divina Commedia."

||| In *Inf.* xxi., 32, it appears to be used as equivalent to *dolus*.

*fellonia, fio, foro,\* frode, furto, giustizia, giusto,† giudice, giudicare, giudizio, giuggiare, giurare, giura,‡ interdetto, ingiusto, ingiuria, legge, legista, lite, norma, patto, patteggiare, perdono, perdonanza, privilegio, registrare, reo, rio, sentenza, statuto, testare, testamento, torto,§ tolletto.*|| Worthy of special notice is the great variety of words used for torture, among which are found *briga, dolore, croce, martirio, martire, noia, soffriri, tormento, tortura, travaglia*, and the verbs *affaticare* and *assannare*. The words which follow have an interest of their own. Caorsa ¶ is grouped with Sodom, for usury was a terrible sin in the fourteenth century, and the inhabitants of Cahors were famous usurers. This is not the place to enter on the great question of the treatment of usury in mediæval Italy, but it may be noticed that in the "Divina Commedia" the word *usura* occurs twice\*\* and the word *usuriere* once.†† The usurer is placed among the violent, probably from a misunderstanding of Aristotle,‡‡ and Virgil explains that usury is offensive to Divine goodness because it is contrary to nature, probably from a feeling that the usurer unnaturally produces money from money, "a breed of barren metal."§§ The words *scranna* and *vivagni* are curious. The former appears to be etymologically the English "screen," and *sedere a scranna*||| would mean sitting at screen, very much like sitting in Chancery, if that word be derived from the low Latin word *cancelli*, meaning screen-work. *Vivagni* means the

\* *L' uno e l' altro foro*, Par. x., 104: i.e., civil and canon law.

† Justice is defined in Par. xix., 88, as that which conforms to the Supreme Good.

‡ Or *jura*, Par. ix., 4.

§ *Delitto* is not used.

|| In the sense of *bona vi possessa*, Par. v., 33.

¶ Inf. xi., 50.

\*\* Inf. xi., 95; Par. xxii., 79.

†† Inf. xi., 109.

‡‡ Eth. i., 5, 8.

§§ Inf. xi., 94.

||| Par. xix., 81.

borders of anything, but in one place\* is used to signify the margins of treatises on Canon law, with their closely-printed glosses or *summæ*, *brocarda* or *brocardica*. The well-known phrase *il gran rifiuto*† touches a question of Canon law. This is commonly understood of the resignation of the Papacy by Celestine V. in 1294. It was, according to Scartazzini, a cowardly abjuration of his high office, and was an abjuration rather than a resignation, because a resignation can only be made to a human superior, and a Pope has no human superior. The apostolic succession was broken; Boniface XIII. was a usurper; the chair of St. Peter was vacant.‡ In several cases English lawyers are reminded of familiar phrases. *Bobolca*§ (if Tassoni's view be adopted), and *tollette dannose*|| recall *bovata* and *maletolts*; *per conservar sua pace*¶ reminds of conservators of the peace, and *barattare*,\*\* *barattiere*,†† *baratteria*‡‡ of the now practically obsolete offence of common barratry.§§ *Corte* has a double meaning like *curia* and "court" in England, viz., the king's entourage and a tribunal. In "De Vulgari Eloquentia" the phrase *curia regis* occurs.|||

(4.) *Legal Arguments*.—In two passages there seems to be an allusion to legal procedure. The inquisitorial

\* Par. ix., 135. The allusion is probably to the thumb-marks on the margins, caused by continual study.

† Inf. iii., 60.

‡ This is the reason of St. Peter's strong assertion, thrice repeated, of the usurpation of his place (*il loco mio, il loco mio, il loco mio*, Par. xxvii., 22). It is said that Cardinal Egidio Colonna owed his elevation to the Sacred College to his defence of the legality of Boniface's appointment in his *De Renuntiatione Papæ*. The Canon law on the subject is to be found mainly in Decretals i., 9.

§ Par. xxiii., 132.

|| Inf. xi., 36.

¶ Inf. xxiii., 107.

\*\* Par. xvi., 57.

†† Inf. xxi., 41; xxii., 87, 136.

‡‡ Inf. xxii., 53.

§§ "Barratry of the master and mariners" is, however, still a phrase known in policies of marine insurance.

||| i., 8.



process of the ecclesiastical courts is perhaps glanced at in the Purgatorio,\* and in the Inferno the trial before Minos is entirely in accordance with the practice of the mediæval Italian courts, both ecclesiastical and secular, for the purpose of obtaining evidence.† The argument of Cicero, *aut vi aut fraude fiat injuria*,‡ seems to be the basis of the argument in the Inferno that injury works either by force or fraud, but fraud is the more displeasing to God because it is a peculiarly human failing (*proprio male*), therefore the fraudulent are more severely punished than the violent.§ In the same canto there is an attempt at a division of fraud, according as it is practised on one who trusts the fraudulent person or on one who does not. The former is the graver offence and is punished as treason.|| At the end of Canto VI. of the Purgatorio is the famous comparison of Florence to a sick woman who can find no rest in her bed. Florence is similarly unsettled, for she is continually changing

*Legge, moneta, officio, e costume.*

Later in the Purgatorio the poet says that law should be a curb (*freno*), and laws there are, but who obeys them? The reason is that what made Rome great, the two suns—Emperor and Pope—no longer shine, for the light of the one has extinguished the light of the other.¶ The lines

*in nostra corte*

*Rivolge sè contra 'l taglio la rota,\*\**

\* *E dolcemente sì che parli acco' lo*, Purg. xiv., 6.

† Inf. v., 7. "Good judges and justices," says Coke, "abhor these practices," 2 Inst., 55.

‡ De Off., i., 13.

§ Inf. xi., 23.

|| *Id.*, 53.

¶ xvi., 106. They are the *duo luminaria* of De Monarchia iii., 1, 4; there he also calls them sun and moon. The two swords of S. Luke, xxii., 38, he is careful to say in De Mon. iii., 9, do not represent the temporal and spiritual jurisdiction of the Pope.

\*\* Purg. xxxi., 41.

seem to mean that in the Court of Heaven confession and repentance blunt the sword of justice. The justice of heaven seems unjust to man, says Beatrice,\* but that ought to be an incentive to faith rather than to heresy. Twice the theory of a *patto* between God and man appears; the vow is such a compact, it is offered by man's free will, and is the victim in the sacrifice;† the *patto* with Noah is suggested to men by a double rainbow, and so is bilateral.‡ The Latin line,

*Non decimas quæ sunt pauperum Dei,§*

is the statement of part of a legal truth, but into the vexed question of a tripartite or quadripartite division of tithe Dante does not enter.

(5.) *Penology*.—Dante does not fully distinguish crime from sin. A crime with him is a crime because it is a breach of the law of God. That it is also a breach of the law of the State is simply a coincidence.|| For instance, in one passage he groups crimes and moral offences together as deserving the same punishment.¶ His treatment of crimes and punishments is very instructive as a guide to the sentiment of the period.\*\* It is useless to classify the crimes *in extenso*, as almost every possible variety of crime is mentioned. Some of the more interesting are those which follow.

*Affaturare,†† arti,‡‡ magiche frode. §§* The importance

\* Par. iv., 67.

† Par. v., 28.

‡ Par. xii., 17.

§ Par. xii., 93.

|| This is quite in accordance with the stage of law described by Sir H. Maine, in which the distinction between sin, tort, and crime has not yet been drawn. (Ancient Law, c. x.)

¶ Inf. xi., 58.

\*\* *É pela penalidade que melhor se caracteriza o direito de um povo* (Braga, *Poesia do Direito*, Oporto, 1865, p. 145).

†† Inf. xi., 58.

‡‡ Inf. xx., 86.

§§ *Id.*, 117.

attached to these shews that Dante was no more in advance of his age in the matter of witchcraft than was Sir Matthew Hale, nearly four centuries later.

*Alchimia* is regarded as a crime probably because by it a coiner was enabled to transmute metals and so defraud the State.\* It so became practically equivalent in heinousness to debasement of metal, the crime for which Adamo of Brescia suffered when he struck

*fiorini*

*Che avean tre carati di mondiglia.†*

*Falsità* (falsification) seems to have been as common an offence as coining, and *falsatori* suffered a punishment of their own.‡ The *falsità* seems to have been of several kinds. Like *alchimia* it included coining§ and the making of a false die (*conio*).|| It also included the making of false weights and measures, when the *doga* was not safe¶ and there were some who blushed at the word *staio*.\*\* False entries in public registers fell within *falsità*,†† and so did the double fraud of Gianni Schicchi, who first personated Simon Donati, and then made a will in the name of the latter and duly executed it (*dando al testamento norma*), all for the miserable bribe of the lady of the herd (*la donna della torma*).‡‡ It is worth noticing that *falsità*, in Dante, though from the frequent mention of it evidently a crime of importance, both financially and politically, was not at

\* Inf. xxix., 119, 137.

† Inf. xxx., 90.

‡ Inf. xxix., 57. The coiner is called *monetiere* in Inf. xxx., 124.

§ Par. xix., 119.

|| Inf. xxx., 115; Par. xix., 141 (from which it appears that even royalty could commit the offence). The verb *coniare* is used in Inf. xxx., 111. *Moneta senza conio* comes in the famous attack on Boniface VIII. in Par. xxix., 127.

¶ Purg. xii., 105.

\*\* Par. xvi., 105.

†† Purg. xii., 105.

‡‡ Inf. xxx., 40.

Florence regarded as treason as was coining in England by the Statute of Treasons of Edward III.

*Omicidio*\* is grouped by Dante with malicious murder (*che mal fiere*) and with plunder and robbery, and the offenders are placed in the first circle.† The distinction made between homicide and murder is familiar to the historical student of English law, but the technical distinction made by Bracton between *homicidium* and *murdrum*‡ was not one known to Italian jurists. *Omicidio* no doubt means slaying of a human being where there was some *culpa* present, though not amounting to malice aforethought. *Malizia* and *malizioso* are used, but apparently only in a general sense.§

*Tradimento* is used in two senses: (1) Fraud practised on one who trusts the guilty person;|| (2) treason against either the temporal or spiritual head of the Commonwealth. Judas Iscariot and Brutus and Cassius are punished in the same way, for their crime was the same.¶ Treason against the Emperor is the worst of all treason, for it is in the nature of sacrilege; it is the daring, which in Dante's words,

*Si muove contra il sacrosanto segno.\*\**

Punishment in the period of the "Divine Commedia" was in its most savage stage, and was inflicted partly by the State, partly as a matter of private vengeance, as in the starving of Ugolino and his sons in the Tower of Famine. In one or two places Dante shews himself in advance of

\* The abstract term is not used, only the concrete plural *Omicide*, Inf. xi., 37.

† *Id.*, 39.

‡ Bracton, 134b: "The word murder is never used to differentiate two degrees of homicidal guilt, it merely means that the slayer has not been caught, and that Englishry has not been presented" (Maitland, "Pleas of the Crown for the County of Gloucester, 5 Hen. III.," p. xxx.).

§ They occur in juxtaposition in Inf. xxii., 107, 110.

|| Inf. xi., 53 (*see above*).

¶ Inf. xxxiv., 61—67.

\*\* Par. vi., 31.

his age. He deprecates the exhumation of Manfred's corpse as an act of useless vengeance,\* as barbarous as the Roman procedure in trial for treason after death.† He holds that punishment should be proportioned to the crime,

*Perchè sia colpa e duol d' una misura.‡*

Punishment inflicted as private vengeance is not punishment at all, it must be inflicted by one having jurisdiction. Whence it was left for Pilate, and not for Herod or Caiaphas, to inflict punishment on Christ.§

Among other punishments named by Dante are beheading; || burning alive, to which Dante himself was actually condemned, and which Gripolino of Arezzo suffered for alchemy, ¶ and Adamo of Brescia for coining; \*\* wrapping in lead and casting into a furnace, the penalty inflicted for treason by Frederic II. †† These instances are sufficient to shew that the "*Divina Commedia*" was not entirely the *felicis vitæ speculum* that Filippo Villani called it. Characteristic or exemplary punishments, as Bentham called them, were not unknown to Dante. ‡‡ An example is Bertram dal Bornio, who carries his head separated from his body, *a guisa di lanterna*, because he separated father and son by his mischievous counsel. §§ Another instance is

\* Purg. iii., 127.

† Cod. ix., 8, 6. The same procedure was known in Scotland.

‡ Purg. xxx., 108.

§ De Mon. ii., 13.

|| Inf. xxxii., 65.

¶ Inf. xxix., 110.

\*\* Inf. xxx., 61.

†† Inf. xxiii., 66.

‡‡ See Bentham, "*Principles of the Penal Code*," pt. iii., c. vii.; "*Principles of Morals and Legislation*," c. xv.; Braga, p. 113; Ortolan, *Les Pénalités*, p. 111. The last writer makes a special point of *l'idée d'analogie* in Dante's punishments, and gives illustrative instances from old codes, such as that of Frederic II. for the Two Sicilies and the Carolina of Charles V. Rivarol (*Étude sur Dante*) takes the same view: *Chaque supplice est pris dans la nature du crime qu'il punit.*

§§ Inf. xxviii., 122.

Caiaphas crucified, condign punishment for the counsel given to the Pharisees, which led to the crucifixion.\*

As to the remaining works, the subject-matter of the *Vita Nuova* and the *Quæstio de Aqua et Terra* does not afford much scope for the lawyer, the *Convito*, the *De Vulgari Eloquentia*, and the *Epistles* contain scattered allusions, while the *De Monarchia* is permeated with law, it is a treatise on political philosophy by a constitutional lawyer, the object being to prove, chiefly by deductive reasoning, that *jus soli* and *jus poli* are distinct.† Such being the case, it is difficult to make extracts, as the whole work might be cited in illustration of Dante's legal powers. As far as can be done, some of the more interesting and important passages of the work will be summarised, and afterwards the same course will be attempted for the interesting, if less important, phrases from the other prose works.

*De Monarchia*.—The necessity of a supreme judge is argued in i., 10. Wherever there is a suit, there must be a judgment. The judge must be superior in jurisdiction to the litigants, and must be a monarch or not. If the latter, there must still be some one superior to him, and so on *ad infinitum*. Accordingly the supreme judge must be in the last resort a monarch or *imperator*. Therefore monarchy is necessary to the world,‡ which is ordered

\* Inf. xxiii., 118.

† "His reasoning is throughout closely syllogistic; he is alternately the jurist, the theologian, the scholastic metaphysician." (Bryce, "Holy Roman Empire," c., xv.

‡ This view has legal authority. *Et forte si quis diceret dominum imperatorem non esse dominum et monarcham totius orbis esset hæreticus, quia diceret contra determinationem ecclesiæ et textum sancti evangelii dum dicit, "Exiit edictum a Cæsare Augusto ut describeretur universus orbis"* (Bartolus on Dig. xlviii., 1, 24). The canonists of course excepted the donation of Constantine, *ubi enim principatus sacerdotum et Christianæ religionis caput ab Imperatore Cælesti constitutum est, justum non est ut illic imperator terrenus habeat potestatem* (Decretum, dist. xcvi., c. 14). Compare the forlorn hope of Petrarch, *nulla prorsus apud nos dubitatio relinquitur monarchiam esse optimam relegendis reparandisque viribus Italis* (Epist. Fam. ii., 7).

best when justice is paramount. Of justice the monarch is the purest embodiment. He is so because he has nothing to covet, therefore the opposition between covetousness and justice,\* insisted on by Aristotle,† cannot affect him (i., 11). Laws are made to suit the State, not the State to suit the laws; the legislature is ordained for law-abiding citizens, not they for it (i., 12).‡ Municipal laws must be supplemented where deficient by *ἐπιείκεια*.§ Different States must be regulated by different laws. Law is the directory rule of life—*est enim lex regula directiva vitæ*.|| Such a rule must be imposed in the last resort by one person, and the government of one is more advantageous to the human race, and therefore more acceptable to God than the government of many (i., 14).¶

The second of the three disputed points in i., 2, is whether the Romans acquired empire *de jure* or not. The whole of book ii. is occupied with the proof of the affirmative. All law, as far as it is good, exists first in the mind of God, and is willed by God. Therefore law in the world is the likeness of the Divine will—*jus in rebus nihil est quam similitudo divinæ voluntatis*—and whether a thing exists *de jure* or not depends on its consonance or dissonance with the Divine will (ii., 2). The fifth chapter is full of law. Dante begins with the axiom that the end of law is the good of the State, a thoroughly Benthamite view.\*\* Law

\* Covetousness is the corrupter and hinderer of justice, i., 13.

† Eth. v., 1, 8.

‡ Pol. iii., 16, 17.

§ Eth. v., 10.

|| Paraphrased from S. Thomas, *lex æterna nihil aliud est quam summa ratio divinæ sapientiæ, secundum quod est directiva omnium actuum et motionum* (Summa, i., 2, qu. 93, art. 1).

¶ This is a prose version of Par. xvi., 71:—

*E molte volte taglia  
Più e meglio una che le cinque spade.*

\*\* "The public good ought to be the object of the legislator," are the opening words of Bentham's "Principles of Legislation."

is defined as the real and personal proportion of man to man, which, if preserved, preserves society; if corrupt, corrupts it—*jus est realis et personalis hominis ad hominem proportio quæ servata hominum servat societatem et corrupta corrumpit*. The Digest does not define, but only describes, law.\* Every law must intend the common good. This is in accordance with Cicero, *semper ad utilitatem reipublicæ leges interpretandæ sunt*.† Seneca, too, says that law is the bond of society.‡ The Romans intended the good of the State; therefore they intended the end of law. The sixth chapter still further develops this argument by a syllogism in this form. Everyone who intends the end of law proceeds legally; the Roman people in subduing the world intends the end of law; therefore the Roman people in subduing the world proceeds legally. Consequently it attains *de jure* the imperial dignity (ii., 6). In forming a corporation the power of exercising corporate functions is considered, for law does not extend beyond possibility. Natural order cannot be preserved without law, for the foundation of law is inseparably annexed to order. Order must therefore be preserved *de jure*. The Roman people was by nature ordained to rule, therefore came to empire *de jure* (ii., 7).§ Chapters viii.—xi. deal with the argument from the trial by battle, one kind of Divine judgment (*judicium Dei*),|| an argument to a

\* He probably alludes to the text in Digest i., 1, pr., adopted by Ulpian from Celsus, *jus est ars boni et æqui*. This is also alluded to in *Cōnvito*, iv., 5.

† *De Invent.*, i., 38.

‡ The citation is not from Seneca, *Liber de Quatuor Virtutibus*, as supposed by Dante, but is, on Witte's authority, from Martinus Dumiensis, Bishop of Braga (d. 580). (See E. Moore, "Studies in Dante," p. 290.)

§ *Imperium sine fine dedi*, said Virgil, more than thirteen centuries before Dante.

|| *Judicium* also signified the ordeal. In the statutes attributed to William the Conqueror (included in Stubbs' Select Charters), it is contrasted with the trial by battle, *aut judicio ferri aut duello*.



modern lawyer the most curious and interesting part of the *De Monarchia*. The argument put concisely runs thus: The Divine judgment is sometimes manifest, sometimes secret. Among other modes in which the secret judgment may be given are the lot (*sors*) and the combat (*certamen*).<sup>\*</sup> The latter is of two kinds, the combat proper (*duellum*) or the contest of athletes (*contentio*), such as a race (ii., 8). The people which prevailed when all were competitors for the empire of the world prevailed by Divine judgment. The Roman people was the only one which attained the goal in the race (ii., 9).<sup>†</sup> What is acquired by *duellum* is obtained *de jure*, provided that the combat be entered into, not from interested motives, but only from zeal for justice (ii., 10). The Roman people acquired empire by combat, therefore it acquired it *de jure* (ii., 11). That being so, the Roman people had the right of issuing just edicts (*juste edicere*), and from that follows jurisdiction (ii., 12). The thirteenth chapter is interesting as setting out Dante's theory of capacity to punish. Punishment is not simply a penalty inflicted on the person committing an injury, but a penalty inflicted by one who has jurisdiction to punish.<sup>‡</sup> Hence, unless the penalty be inflicted by an ordinary judge,<sup>§</sup> it is not a punishment but rather an injury. If, therefore, Christ did not suffer under an ordinary judge He was not punished, and the judge could not have been an ordinary

\* He strengthens his argument by deriving *certamen* from *certum facere*.

† Cf., *Romanis spatium est urbis et orbis idem*, Ovid, *Fasti*, ii., 683.

‡ *Punitio non est simpliciter pœna injuriam inferentis sed pœna inflcta injuriam inferenti ab habente jurisdictionem puniendi.*

§ The *judex ordinarius*, or judge ordinary of ecclesiastical law, was no doubt derived from the Roman law with its marked division of *cognitio* into *ordinaria* and *extra ordinem*. The "ordinary" still survives in modern English ecclesiastical terminology. The point of Dante's argument depends on the view of the Canon law that an ordinary has by virtue of his office authority to judge. Coke says he is so called *quia habet ordinariam jurisdictionem in jure proprio et non per deputationem* (Co. Litt., 96a).

judge unless he were invested with jurisdiction over the whole human race, for Christ bore in His person the sorrows of the race which was punished in Him. Tiberius and Pilate, his deputy, would have had no jurisdiction unless the empire had existed *de jure*.

Book iii. is less directly legal in its argument than the preceding books. The writer has reached the summit of his reasoning,\* that the office of Emperor is held directly of God, and not from the successor of Peter, the vicar or minister of God (iii., 1). Three kinds of persons strive against the truth by *litigium*,† the Pope and other pastors of the Church, false sons of the Church, and Decretalists, by their Decretals derogating from the Empire (iii., 3).‡ A *vicarius* is one to whom jurisdiction is committed *cum lege vel cum arbitrio*,§ and within the limits of his jurisdiction he can act with respect to *lex* or *arbitrium* in matters of which his principal is ignorant. This a *nuntius* cannot do, but he can act at the sole will of the person who sends him, and therefore by special commission may have more extensive powers than a *vicarius*. Anything that cannot be done by a *nuntius* a fortiori cannot be done by a *vicarius* (iii., 6).|| The successor of Peter can loose and bind, but this does not mean that he can loose or bind imperial decrees or

\* It is perhaps hardly fanciful to regard book iii. as the *Paradiso* of the *De Monarchia*. The triple division of the great poem and the great prose work was probably not accidental.

† The word is probably used here in a general and not a technical sense, and denotes any kind of contentiousness.

‡ See Par. ix., 133.

§ *Arbitrium* here is used in a less technical sense than it bore in Roman law, where it usually means judgment in a *bonæ fidei* action.

|| *Vicarius* and *nuntius* are both Roman law terms. The former seems to be applied in the classical texts only to a judicial substitute, and it appears to be in this sense that Dante uses it. The other sense in which the classical jurists employ it, of the slave of a slave, is of course beyond the scope of Dante's argument.

laws (iii., 8). The donation of Constantine to Sylvester\* was invalid because the Emperor had no authority to alienate, and the Church no authority to accept.† No one can act in contravention of an office deputed to him; ‡ for the Emperor to do this would be to part (*scindere*) the Empire, and so the seamless robe would be rent. The foundation of the Empire is human law, and it is not permissible for the Empire to act contrary to human law. It is contrary to human law to destroy the Empire. Every jurisdiction is prior in time to the judge who acts under it, for the judge is ordained to the jurisdiction and not the converse. But the empire is a jurisdiction which comprehends in its compass all temporal jurisdiction; it is therefore prior to its judge, the Emperor. Therefore the Emperor cannot diminish the jurisdiction of the Empire (iii., 10). Usurpation of law does not make law (iii., 11). If the Church have the power of authorising the Roman Emperor, such power must be given by God, or must be derived from other sources, set out by Dante. But if the power be given by God, it must be so given either by Divine or by natural law, and it is proved that it cannot be given by either (iii., 14).

*Convito*.—Though it never reaches the discussion of justice which was to be the subject of the last book, § still contains much of interest to the lawyer, even the *dictum* in iii., 11, that a lawyer, like a physician and most of the

\* Inf. xix., 115. (See citation above from the *Decretum*.)

† Or if it do accept, it is not as *possessor* but as *dispensator* of the profits to Christ's poor (iii., 10).

‡ This is a well-known principle of Canon law. (See, for instance, *Decretals*, v., 31 & 33; Aycliffe's *Parergon*, 161, 163.) In Roman law the nearest text seems to be *A iudice iudex delegatus iudicis dandi potestatem non habet*, Cod. iii., 1, 5.

§ iv., 27. The only allusions to justice in the treatise as it stands are in ii., 15, where he cites Aristotle as teaching (*Eth.* v., 2) that legal justice requires the sciences to be taught, and in iv., 11 and 27 (see below).

religious, cannot be a true philosopher when he loves wisdom not for herself but for gain. The theory of interpretation in ii., 1, is Dante's own, but is probably based on legal writings.\* iv., 4, reminds of the argument of the *De Monarchia*, the Emperor is universal governor and what he says is law to all.† Law is written reason‡ and is necessary because men do not know or obey equity (*equità*). Whence it is written at the beginning of the *Digestum Vetus*§ that written reason is the art of good and equity (iv., 9).|| The allotment of riches does not depend on distributive justice, for they come by pure fortune or by fortune aided by reason, as by testament or mutual succession, or by fortune the helper of reason. It is to the bad rather than the good that inheritance falls by *legatum* or *caducum* (iv., 11). The object of both canon and civil reason is to rectify the avarice which grows by accumulation of wealth. This is manifest from the beginning of their writings (iv., 12).¶ The mind may be infirm. Of this infirmity the law speaks when it says in the *Infortiatum*\*\* that in him who makes a testament soundness of mind and not soundness of body

\* It appears again, but with some difference, in Epist. x., 7.

† Cf. Ulpian's statement, *quod principi placuit legis habet vigorem* (Dig. i., 4, 1).

‡ *Ragione* often means law or a body of law in the Convito, e.g., in *Canonica* and *Civile Ragione* below, and in this meaning is probably based on S. Thomas' definition, *Lex æterna nihil est quam summa ratio divina sapientiæ* (Summa, i, 2, qu. 93, art. 1). *Ratio* is the keynote of the Aquinian philosophy. Compare Coke's famous saying, "The common law itself is nothing but reason" (Co. Litt., 97b).

§ In Dante's time the old division of the Digest into *Vetus*, *Infortiatum*, and *Novum* was the accepted one. It lasted up to the seventeenth century.

|| A free rendering of Celsus' *ars boni et æqui* (Dig. i, 1, pr.).

¶ Probably an allusion to Ulpian's rule, *Juris præcepta sunt hæc; honeste vivere, alterum non lædere, suum cuique tribuere* (Dig. i., 1, 10, 1.).

\*\* Dig. xxiv., 3—xxxviii.

is required at the date of making the testament (iv., 15).<sup>\*</sup> It is written in reason, and by a rule of reason it is held that in those things which are manifest of themselves there is no need of proof (iv., 19).<sup>†</sup> Reason wills that before the age of twenty-five a man cannot do certain things without a *curator* of full age. The law commands that the person of the father should always appear to his sons sacred and honourable.<sup>‡</sup> If the father die, the son ought to be guided by the father's last will; if the father die intestate, the son ought to be guided by him to whom the law commits authority (iv., 24). Loyalty is the following of the law, and the young man ought to obey the law and take delight in such obedience. Long continued usage is law (iv., 26).<sup>§</sup> In iv., 27, a curious distinction—not very easy to observe in practice—is drawn between the advice for which a lawyer may charge and that for which he may not charge. *Messer lo legista* is warned that he ought only to charge for advice which has reference to his art, not for that which proceeds solely from good sense or prudence. The whole gain he may not keep, even when he is entitled to charge, for he must give one-tenth to God, that is, the poor. In the same chapter Dante claims justice as the particular virtue of age. It is right for an old man to be just that his judgments and authority may be a light and a law to others. The allusion in iv., 29, to Manfredi da Vico, "who is now called Prætor and Prefect," serves to

\* A free translation of Labeo in Dig. xxviii., 1, 2, *in eo qui testatur ejus temporis quo testamentum facit integritas mentis non corporis sanitas exigenda est.*

† No such principle appears *totidem verbis* in the Corpus Juris, but there are texts which approach it, e.g., Dig. xxxvi., 3, 14, 1; xl., 12, 27, 1. (Cf., in the Canon law, *evidentia patrati sceleris non indiget clamore accusatoris*, Decretals v., 1, 9.)

‡ *Obsequium* to parents is enjoined by Dig. i., 16, 9, 3.

§ *Diuturna consuetudo pro jure et lege in his quæ non ex scripto descendunt observari solet*, Dig. i., 3, 33.

remind the reader of the continuity of Roman names of offices and institutions in medieval Italy. The tribunate of Rienzi is another example. The *gridario* of the provincial governor was, no doubt, an imitation of the edict of the *præses*, and decurions survived as local magistrates until modern times.

*De Vulgari Eloquentia*.—There is little opportunity for displaying knowledge of law in a work on philology, though one or two passages of some legal interest occur.\* The phrases *curia regis* and *curialitas* in i., 18, remind the English lawyer of the King's Bench and tenancy by the curtesy,† but it is scarcely necessary to say that Dante does not use them in their English technical senses, but to signify the King's Court in its social aspect and the courtliness or *cortesia* that one expects to find there. The only direct allusion to law seems to be in i., 16, *legem secundum quam dicitur civis bonus et malus*. Cino da Pistoia (Cinus Pistoriensis or de Pistorio) is alluded to several times, but as the poet and not as the lawyer. Lines of his are cited in ii., 2, 5, and 6.

*Epistles*.—The 4th is addressed to Cino, *Exulenti Pistoriensi exul Florentinus exul*, but contains nothing of legal interest. In the other epistles are found one or two legal phrases rather than arguments, e.g., *qui civilia jura temeraria voluptate truncaverunt* (i., 2), *civium profana litigia*‡ (ib.), *vos instituit in heredes* (ii., 2),§ *vinculo legis* (v., 7),|| *legum sanctiones* (vi., 2),¶ *nescio quid*

\* As they also do in the work of Dante's imitator, Alunno, *Le Ricchezze della Lingua Volgare* (Venice, 1543).

† In England a tenant by the curtesy is generally said to hold *per legem Angliæ*, but in Scotland the term *curialitas Scotiæ* is used, (Co. Litt., 30a).

‡ Perhaps used only in a general sense, as in De Mon., iii., 3.

§ The preposition is not usual in the classical jurists, in whom *heredes instituere* is the common form.

|| *Juris vinculum* and *obligationis vinculum* occur in the Corpus Juris, but apparently not *legis vinculum*.

¶ Used in Dig. xlviii., 19, 41.

*Speculum*,\* *Innocentium*,† *et Ostiensem*‡ *declamant* (viii., 7). The only approach to a legal argument is in vi., 2, that public rights are not affected by prescription, (*publica jura cum sola temporis terminatione finiri et nullius præscriptionis calculo fore obnoxia*). English lawyers will be reminded of the common law maxim, *Nullum tempus occurrit regi*.§

*Bibliography*.—The literature on this branch of Dante learning is not copious, and the works, as far as the writer has been able to obtain access to them, deal almost entirely with philosophical generalities. The only work dealing directly with the question seems to be *Dante Giureconsulto*, by Vincenzo Lomonaco, of which an abstract is given by Ferrazzi,|| but the writer has not been able to meet with the original, or to discover the date. Ferrazzi also mentions a letter of Nicolò Tommaseo to Lomonaco.¶ Other monographs more or less connected with the subject will be found in other parts of Ferrazzi. They are by Francesco Carrara, Giambattista Zoppi, J. F. H. Abegg, and others.\*\* Colomb de Batines gives only two references: (1), a note in Scolari's *Ragionamento*††; (2) *Atti dell' Accademia Italiana*,

\* *Speculum* and *Speculator* are used in their ordinary sense in ix., 4. The allusion is to the *Speculum Juris* of Durante or Durandus (d. 1296), which was one of the numerous *specula* written on the subjects of Law, Theology, and Philosophy. Other eminent Canonists who wrote *specula* were Johannes Andreæ (*Speculum de Treuga et Pace*), and Peter of Blois (*Speculum Juris Canonici*). (See an Obiter Dictum on the subject, L.M. and R., vol. xx., p. 281.)

† Probably the *Compilatio Tertia* of Innocent III., much of it incorporated into the Decretals by Gregory IX.

‡ Enrico da Susa (see above).

§ Just as the English maxim is too wide for the modern law, so the law as laid down by Dante must be taken subject to certain exceptions. Still what he says may be illustrated by the rules of Roman law, that there could be no *usucapio* against the *fiscus*, and no prescription against taxes (Cod. vii., 39, 6)

|| *Manuale Dantesco*, i., 52.

¶ *Dante ed il Diritto* (1872).

\*\* *Manuale Dantesco*, ii., 292; iv., 126.

†† Padua, 1823.

i., 208.\* He also mentions (without acknowledging that the information appears in Scolari's note) that the portrait of Dante is put among *Illustrium Jurisconsultorum Imagines*.† Biagi in his continuation of Colomb de Batines, under the head of *Dante Giureconsulto*,‡ alludes to a controversy which appears to have arisen on the subject, beginning with a work by Niccolini.§ Other works are those of Ortolan, already mentioned,|| and G. de Marinis de Raffaele.¶ Marinis's views are largely affected by the influence of Beccaria and his school; and in what has been said on the question of punishment the writer is much indebted to him. But his instances are often anything but convincing, and he suffers from the not unusual failing of attributing to Dante views of which he was probably entirely innocent. Shortly put, his theory is that according to Dante punishment to be justified must fulfil certain conditions. It must be (1) analogous and proportioned, (2) confined to the offender, (3) reformatory, (4) deterrent, (5) equal, (6) reparable, (7) prompt, (8) legal, (9) inflicted by proper authority. These are no doubt excellent conditions, but to attribute them all to a Florentine writing in the fourteenth century is perhaps rather a strong measure.

JAMES WILLIAMS.

\* p. 568.

† Rome, 1566.

‡ *Guinti e Correzioni*, p. 198 (Florence, 1888).

§ *Trattato del Tentativo* (Naples, 1837).

|| *Les Pénalités de l'Enfer de Dante* (Paris, 1873).

¶ *Dante Alighieri Autore d' una Teorica della Pena Superiore ai Tempi che apparve* (Bari, 1884).



## IV.—THE LATE SIR TRAVERS TWISS.

WE regret to announce the death of one of the oldest contributors to this *Magazine*, Sir Travers Twiss, D.C.L., Q.C., who died at Fulham on the 14th of last month, aged 87 years. He was the eldest son of the Rev. Robert Twiss, of Trevallyn, Denbighshire, and was born at Westminster on March 19th, 1809. He went to University College, Oxford, in 1826, and two years later appeared in the first class in Mathematics, and the second class in Classics, being subsequently elected Fellow, and also appointed tutor of University College, where he continued to reside for many years. In 1835 he was Public Examiner in Classics, and in 1838 in Mathematics, both of which examinerships he held for three years. In 1838 he became a Fellow of the Royal Society; in 1842 Drummond Professor of Political Economy; and in 1847 wrote his "View of the Progress of Political Economy in Europe since the 16th Century." In 1846 he began to write on International Law, publishing an Essay on the Oregon question. In 1848 he wrote a Treatise on the Relation of the Duchies of Schleswig and Holstein to the Crown of Denmark and the German Federation; in 1850 "Letters Apostolic of Pius IX. considered with reference to the Law of England and the Law of Europe." In 1837 he had published an Epitome of the works of Niebuhr, following it up with an Edition of Livy. In 1852 he was appointed Professor of International Law at King's College, London, which he held for three years, when he accepted the Regius Professorship of Civil Law at Oxford, which he held for fifteen years.

He was called to the Bar at Lincoln's Inn on 28th January, 1840, and became an advocate of Doctors'

Commons in the same year, becoming Commissary-General of the City and Diocese of Canterbury in 1849, Vicar General of the Archbishop in 1852, Chancellor of the Diocese of London in 1858, and Advocate-General of the Admiralty in 1862, receiving the honorary fellowship of University College, Oxford, in 1864. On the passing of "An Act to Amend the Law Relating to Divorce and Matrimonial Causes in England" (20 & 21 Vict., c. 108) in 1858, which struck a heavy blow at the ancient jurisdiction of Doctors' Commons, Twiss became a Queen's Counsel, and ten years later was promoted to the high office of Queen's Advocate General, receiving a few months after the rank of knighthood. He was created a Bencher of his Inn in 1858.

He served on many Royal Commissions and public enquiries, viz.:—In 1852 on the Commission of Enquiry into Maynooth; in 1867 on the Enquiry into the Laws of Neutrality; in 1868 on the Naturalization and Allegiance enquiry; in 1869 on the Law of Marriage, and on the Rubrics; and also he was one of the Commissioners to settle the boundary line between the provinces of New Brunswick and Canada. In 1884 he drew up the Constitution for the Free State of the Congo, and in the following year acted as legal adviser to the British Embassy during the West African Conference at Berlin.

On the 21st of March, 1872, in consequence of domestic trouble, he resigned all his public appointments, and devoted himself exclusively to literary work. He had written, in 1861, "The Law of Nations considered as Independent Political Communities" and "The Law of Nations in Time of Peace and War." He brought out new Editions of these in 1875 and 1884, translating the work into French with the assistance of M. Alphonse Rivier of the University of Brussels. He wrote a valuable edition of "The Black Book of the Admiralty," under the direction of

the Master of the Rolls in 1874, and contributed articles to the *Nautical Magazine*, the *Revue de Droit International*, as well as frequently to this *Magazine*, in which the last of his articles, viz., "An International Arbitration in the Middle Ages," was published in our November number of last year. He was Vice-President and one of the founders of the *Institut de Droit International* in 1872, and also one of the promoters of a kindred society, the Association for the Reform and Codification of the Law of Nations.

He was buried at Fulham Cemetery, Middlesex, on January 20th, in the presence of many devoted friends who mourned his loss, among whom were Mrs. Richard Marsden, his niece; Dr. Tristram, Q.C., Chancellor of the Diocese of London, and Judge of the Consistory Court; Professor Holland, D.C.L., of the University of Oxford, member of the *Institut de Droit International*; Mr. Alfred Burton, M.R.C.S. (Eng.); Dr. Stubbs, of the Middle Temple; and Sir Sherston Baker, Bart. Her Majesty the Queen communicated her regret, and the King of the Belgians his sympathy, to the relatives of the deceased,

. . . . Sed omnes una manet nox,  
Et calcanda semel via leti.

THE EDITOR.

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## V.—CURRENT NOTES ON INTERNATIONAL LAW.

### Foreign Judgments “in rem.”

A very curious question arose in the recent case of *Minna Craig Steamship Co. v. Chartered Mercantile Bank of India, London and China*, 1897 (1 Q.B.), 55. The plaintiffs, an English Company, owned a ship, the *Minna Craig*, which sailed from India to a German port. Her master was induced by fraud to sign Bills of Lading for goods which were never in fact put on board. The bills were indorsed for value without notice of the fraud to the Defendant Company, whose registered place of business was in England.

During the ship's voyage a winding-up petition was presented against the Plaintiff Company. On arrival at Hamburg, the defendants, who had in the meantime discovered the fraud, arrested the ship and took proceedings to enforce against her a lien, to which, by German law, non-delivery of the goods entitles the holder of a Bill of Lading. The German Court declared in favour of the lien, and ordered it to be satisfied by sale of the ship. The plaintiffs brought an action in England against the defendants to recover from them the fruits of their foreign judgment, as money had and received to the plaintiffs' use, alleging it to be devisible among the general body of creditors. The Court (Henn Collins, J.) held that the plaintiffs could not recover.

It will be observed that there were really two conflicting principles applicable to the case. *Firstly*: the rule, not altogether free from doubt, that the “winding-up of a” company impresses the whole of its property with a trust “for application in the course of the winding-up for the

"benefit of the persons interested in the winding-up." (See *Dicey's "Conflict of Laws,"* rule 68, p. 343; Westlake, 3rd edition, p. 154; *in re Oriental Inland Steam Co.*, L.R. 9 Ch. 557). Secondly: the well-established rule that "a valid foreign judgment *in rem* in respect of the title to a movable gives a valid title to the movable in England to the extent to which such title is given by or under the judgment in the country where the judgment is pronounced." (See *Dicey*, rule 102, p. 427-429; and see *Castrique v. Imrie*, L.R. 4 H.L. 414; *Cammell v. Sewell*, 5 H. & N. 718, etc.)

As regards the former of these two points, the difficulty suggested by Westlake and referred to by *Dicey* (p. 343, note 3) did not arise in the present case, as the Plaintiff Company was clearly domiciled in England. *Henn Collins*, J., based his decision on the fact that the German judgment was one *in rem* and not merely *in personam*, and that the case was therefore distinguishable from *Hunter v. Potts* (4 T.R. 182), *Sill v. Worswick* (1 H. Bl. 665), and similar cases. The German judgment, it is to be noted, declared that the defendants not only had a lien, but that this lien took priority over other claims, except those for the necessary expenses of prosecuting the voyage and for wages and disbursements.

\* \* \*

#### Local Situation of Property.

The Court of Appeal in *Smelting Co. of Australia v. Commissioners of Inland Revenue* (*Times* L.R., Vol. 13, p. 84, and W.N. 1896, p. 167): held, that a licence to use a patent in New South Wales was not "property locally situate out of the United Kingdom" within the meaning of Sect. 59 of the Stamp Act, 1891. The case was decided on the peculiar wording of the Act itself, but is interesting for the dictum of Lopes, L.J., to the effect that "the property now in

"question could not be said to be locally situate anywhere," and of Rigby, L.J., that "although for the purposes of "Probate Duty it had been held that all property was "capable of being localised, he did not think that for any "other purposes incorporeal rights could be said to have "any local situation." (Compare the cases cited by *Dicey*, "Conflict of Laws," pp. 318-322.)

In connection with a similar point, it is to be observed that the House of Lords has affirmed the decision of the Court of Appeal in the case of *Attorney-General v. Sudeley* (1896, 1 Q.B. 354). (See W.N. 1896, p. 162, and *Times* L.R., Vol. 13, p. 38.) We have already commented on the case in former issues. (See "Current Notes," February and May, 1896.)

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#### Other Cases.

The cases (referred to in our last issue) of *In re Clark* and *In re Doetch* have now been fully reported in L.R. 1896, 2 Q.B. 476 and L.R. 1896, 2 Ch. 836 respectively.

JOHN M. GOVER.

## VI.—NOTES ON RECENT CASES (ENGLISH).

### Customary Heriots.

WHAT has been called an interesting black letter case has recently been before the Court of Appeal. The facts of the case shewed that the plaintiff was lord of the manor, and defendants were the executors of George Christy, deceased. Christy was admitted tenant of certain copyhold tenements of the manor, which included two tenements known as Scotts and Langmead. Christy subsequently died seised of the tenements, and, at the time of his death, was not possessed of any beasts then being, or

which had ever been, within the manor; but he died possessed of two beasts outside the manor. The defendants, not knowing that there was any claim to them as heriots, sold them in order to realise their testator's estate. The plaintiff claimed that he was entitled on the death of Christy to the best beast in respect of each of the tenements, Scotts and Langmead, and sought to recover from the defendants for their alleged wrongful seizure of the beasts. The contention on behalf of the defendants was that the heriots could not be claimed by heriot custom because the custom to take a heriot could not apply to a beast within the manor, but in this case the tenant never had any beast within the manor. Heriots could not be claimed by heriot service, inasmuch as heriot service only applied to fee tenants of the manor, and not to copyholders, being presumed to be founded on a reservation in a deed, and was in the nature of a rent service. The Divisional Court, however, held that heriot service might be applicable to copyhold tenements, and here, though Scotts was not a heriotable tenement Langmead was, and, therefore, judgment resulted for the plaintiff for the value of one beast. This judgment was the reason of the appeal, but the Court of Appeal supported the decision of the Divisional Court, and dismissed the appeal. The Master of the Rolls in giving judgment pointed out that it was contended for the defendants that this was a customary heriot, and the custom was only applicable so as to render beasts upon the manor at the time of the tenant's death liable to seizure. The heriot was admitted by the plaintiff for the purpose of argument to be a customary heriot, but alleged that even then the beasts could be seized outside the manor. The various authorities shewed that on the happening of the event which gave the right to the succession, the property in the beast passed to the lord of the manor. There was no necessity for the lord to have

seized it. If he marked it before or fixed it by description, in either case it would be identified and would pass to him. If, therefore, it was a customary heriot, the lord could seize it wherever it was, and the judgment of the Divisional Court must be affirmed. Reference was made during the case to *Parker v. Sage* (1 Show 81), and *Austin v. Bennett* (1 Salk 356). This decision supports the ancient statutory provisions and cases. A lord has formerly to seize immediately after the heriot accrued, as his right would be concluded by a *bonâ fide* and legal sale by the executors in market overt, by which the property in any goods so sold was effectually transferred. According to 13 Eliz., c. 5, the lord's claim could not be defeated by a will or gift. If a tenant had no beast for a heriot, the lord was defeated, but, according to the old case of *Trinity College v. Brown* (1 Vern 441), a bill in equity lay to discover the best beast of a tenant. Presumably in *Western v. Bailey* the lord has got "the best beast."

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### Restraining Covenants.

In these days of fierce competition it is getting more and more usual to insert in written agreements for the employment of a clerk, manager, or on sale of a business, a clause that the clerk, manager, or purchaser shall not directly carry on or become connected with or interested as principal, clerk, partner, or agent in any business or branch of business similar to the principals or vendors. The time for such restriction is often limited to two years, and a radius of, perhaps, three miles from a certain spot is stated, for the exclusion of the competitor and for any offence, liquidated damages may be fixed on. In construing these provisions the Courts are not inclined to fix a hard and fast line, as the recent case of *Newsam and Another v. Gosheron* shews, where the facts were similar to those



noted. In that case the defendant, an auctioneer, had sold his business, entering into the restraining covenant, and, subsequently, in face of the covenant tried to sell property at the Tokenhouse Mart in the prohibited time, but was not successful. The plaintiff sought an injunction and claimed damages for this breach, and that such offering of the property for sale was carrying on the business of an auctioneer within the meaning of 8 and 9 Vict., c. 15, sect. 4. On the other hand, the defendants contended that the covenant could not apply to an isolated case like this, but only if the business was carried on systematically. In favour of this view, reference was made to the case of *Turner v. Evans* (2 E. and B. 512), where such a covenant as the foregoing was discussed by Lord Campbell, who said he was of opinion that if this was done systematically, it was carrying on the business of a wine merchant. If done now and then to oblige an old customer, or the like, it would be no breach of the contract, for that would not be carrying on the business; but there it was done on system. Mr. Justice Crompton thought, too, that the question was one of fact, was he doing this on system? For he would not be carrying on business if he did it only now and then. Mr. Justice Hawkins, in the present case, left the point to the jury as to whether the defendant had carried on business within the meaning of the covenant, and they decided it in the negative. Supposing, however, it should be afterwards held that it was carrying on business, the damages were assessed at the smallest coin in the realm. The judgment being for the defendant, he was entitled to re-payment of £2 2s. paid into Court with denial of liability, but Mr. Justice Hawkins suggested that £2 18s. 11½d. only should be taken out, letting the farthing remain as security. On the subject of auctioneers genial Douglas Jerrold has an amusing skit, where he states how an auctioneer proceeded to descant upon the extraordinary

attractions of an ossified heart, late the personal property of a distinguished lawyer, assuring his auditory that never since hearts began to beat had there been a "heart" "so peculiarly and so thoroughly ossified." On this a slight titter was heard among the company, when the auctioneer ventured to observe in a low tone audible in every part of the room, that the heart was worth double the sum bid for it, if only to be manufactured into chess men or tobacco stoppers. This sly jest, to the astonishment of its author, convulsed his audience; and with renewed hopes of bidders, and a rubicund face, shining like a carbuncle with self-complacency, the auctioneer proceeded with his task; and, to our mind, proved himself especially worthy of his office; for the true auctioneer would "put up" some of the plagues of Israel, with a grave assurance that there had never been "such locusts," and that probably never such a favourable opportunity would again present itself to the lovers of entomology.

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#### **Sale of Private Business to a Limited Company.**

A lease contained a proviso for re-entry by the lessors in case of breach of the lessee's covenants, and one of these covenants was, that he, his executors, administrators or assigns would not assign, underlet or part with the possession of the demised premises without the previous licence in writing of the lessors. It appeared that the lessee took a lease of the first and second floors of a building together with the use, in common with all other persons entitled to use the same and during usual business hours, of the entrance door on the ground floor, and the other passages and staircases leading from that door to this floor. The lessee then, without obtaining any leave, constructed a lift, and thereby reduced the space where the stairs were, cut away a landing and diminished the light,

the Court in this case of *Peebles v. Crosthwaite* found that the alteration by the defendant was a substantial one and interfered with the demised right of way. During the hearing of the case the plaintiff had died and the action had been continued by the executors, and these executors sold the business and premises to A. M. Peebles and Son, Limited. The company received possession of the stock, affixed its name thereon, and its address was duly registered at Somerset House; but the property was not assigned to the company, and no licence for assignment was asked for. So far as concerned this portion of the property sold, the sale was incomplete. The executors were shareholders in the new company, and two were directors. The directors nevertheless claimed that the covenant had been broken, and the lease was terminated, as there had been notice requiring possession. Mr. Justice Romer, however, did not accept this view, and said the defence was not established. The plaintiffs' executors had not parted with the possession. Possession had been retained for one reason, because it was desired that no breach of the covenant should be committed, and also because the purchase by the company was not fully completed, and it was not desired that while the action was pending, the rights of the parties should be interfered with. The executors still had the legal possession, and had merely allowed the company to use the premises for the purposes of the company. Doing so was not a breach of the covenant. If a lessee retained possession, he did not commit a breach of such a covenant by allowing other persons to use the premises. For the purpose of creating a forfeiture, it was not necessary to hold that persons had given up possession in such a case when it was clearly contrary to their intention to do so. The plaintiffs were, therefore, entitled to an injunction restraining the defendants from using the staircase and premises in their

present condition so far as interfered with the right of way granted by the lease.

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### **Landlords, Tenants and References.**

"In your letter you state that Mr. F. N. requires a reference. I shall be very pleased to be one, and in the event of your failing to pay, I will undertake to be responsible for it." Is such a letter as this a guarantee of the rent (*Kennaway v. Treleaven*, 5 M. & W. 498; *Brogden v. Metropolitan Railway Company*, L.R. 2 A.C. 666) and an agreement to pay the rent, or is the agreement inchoate (*MacIver v. Richardson*, 1 M. & S. 537)? This was the point before Mr. Justice Wright in the case of *Nash v. Spencer*. The plaintiff desired to let a house, and negotiated with a lady to let it to her at a certain rent, but subsequently, after inquiries, refused to do so on her sole responsibility. She then sent the plaintiff the foregoing letter from the defendant. The plaintiff then let the house to the lady, but such rent having become due and not paid, an action was brought against the defendant on the letter. The letter, however, was held not to be an agreement at all. It simply stated a willingness on the part of the defendant to become bound if asked to do so; so that though the letting was clearly due to the receipt by the plaintiff of the letter, yet the defendant was put under no legal liability by it. As has been aptly stated, there are lots of people who never pay rent, and would not if they could avoid it. The proper course for the landlord to do was to have asked for the guarantee, but, failing that, the letter was no good.

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### **The Intricacies of Statutes.**

According to sect. 92 of the Lands Clauses Act, 1845, a party cannot be required to sell a part only of his lands.

There have, however, been passed since this statute the Public Health Act, 1875, and the Local Government Boards Provisional Orders Confirmation (No. 2) Act, 1895, and the point was whether an urban district council could require a party to sell part only of his land or garden and not the whole, for, as the council contended, the statutes of 1875 and 1895 permitted them to do so. The council argued that sect. 176 of the Public Health Act, 1875, did not compel the local authority to put in force any of the compulsory powers of the Lands Clauses Acts other than the procedure powers contained in sects. 16 to 68 of the Act of 1845. Sect. 92 was only, through sub-sect. 5 of sect. 176 of the Public Health Act, 1875, capable of being incorporated in the Confirmation Act by means of some express enactment to that effect to be found therein. Mr. Justice (now Lord Justice) Chitty did not adopt the council's views in this case of *Brenckley v. Twickenham Urban District Council*. His Lordship preferred to decide in favour of the plaintiff, and held that the provisional order, confirmed by the subsequent Act of 1895, contained on its face no modification of the compulsory powers of the Act of 1845, and that the restriction of sect. 92 remained unaffected. The Act of 1895 removed certain fetters, but did not contain any incorporation of the powers of the Act of 1845. But even if there were any incorporation, the defendants were not right in saying that such powers stopped at sect. 68 and did not go so far as sect. 92, or began at sect. 16 and did not include prior sections. In the latter case, according to the defendants' view, local authorities would be in difficulties, for in the case of vendors under disability the local authorities would not be obtaining, by means of their Acts, the benefit of sect. 9 of the Act of 1845 and the procedure thereunder. Whether the Local Government Board could have modified a provisional order in the way contended was not considered. Possibly it could do so,

but then it would be for Parliament to consider, when asked to confirm the order, whether to do so would be just to the owner of the land sought to be taken. It might be added that the present procedure had been in force for a great number of years, though the present point was now heard for the first time. The injunction accordingly issued, but, of course, defendants were not restrained from taking the whole of the premises.

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### Money Lenders and Heirlooms.

If by the terms of a settlement trustees are not to be under any legal liability as to the safe custody of heirlooms, this will not prevent them from interfering by virtue of the legal right which they have in the chattels. They can, therefore, interfere if a tenant for life includes heirlooms in a bill of sale as security for his own debt, and runs the risk of having them seized by a money-lender, more especially if this is done without the consent or knowledge of the trustees. In the case of *Von der Heit v. Sir Robert Peel* such incidents as these had occurred, and one of the trustees of the settlement moved the Chancery Division for the appointment of a proper person to have the care and custody of the heirlooms subject to the trusts of the settlement. The plaintiff and his co-trustee held the Peel family estates, family heirlooms during Sir Robert Peel's life or until alienation, and the trustees besides letting defendant have the personal use of the mansion house, could retain there the family heirlooms or remove them where they thought fit, and allow defendant their personal use and enjoyment. The defendant borrowed money upon security of a bill of sale, and some of the family heirlooms comprising furniture, pictures, cases and boxes of plate, were included in the security, and defendant delivered some of the cases and boxes to a money-lender, who kept them for a time and

then sent them to a safe deposit company. When plaintiff asked for an explanation of the removal of the heirlooms, defendant urged that it had occurred through accident or misapprehension, but as to the plate for motives of safety and economy. Mr. Justice Chitty, however, considered that the defendant's conduct had placed the plate in jeopardy, and that the plaintiff was justified in intervening and asking for the protection of the Court. The plate had, therefore, to be delivered up to the trustees, and a caretaker was appointed for the heirlooms at the mansion house.

T. F. UTTLEY.

## Books Received.

*Paterson's Practical Statutes of the Session 1896.* Horace Cox, London. Price 10s.

*The Maritime Codes of Spain and Portugal.* By F. W. Raikes, LL.D., Q.C. Effingham Wilson, London, 1896. Price 7s. 6d.

*The Preservation of Open Spaces and of Footpaths and other Rights of Way.* By Sir Robert Hunter, M.A. Eyre and Spottiswoode, London, 1896. Price 7s. 6d.

*Confederation Law of Canada.* By Gerald John Wheeler, M.A., LL.B. Eyre and Spottiswoode, London, 1896. Price £2 2s.

*Commentaries on the Constitution of the United States.* Vol. I. By Roger Foster. Kegan Paul, Trench, Trübner and Co., Ltd., London, 1896.

*Etudes de Droit International.* By E. Nys. Castaigne, Brussels; Fontemoing, Paris; 1896.

*Principes de Droit des Gens.* By Alphonse Rivier. 2 Vols. A. Rousseau, Paris, 1896.

*Mortuary Law.* By Sidney Perley. George B. Reed, Boston, 1896.

*Le Témoignage de la Femme; L'Épargne de la Femme Mariée; Les Salaires de la Famille Ouvrière.* By Louis Frank. H. Lamertin, Brussels, 1896.

*La Femme contre L'Alcool.* By Louis Frank. H. Lamertin, Brussels, 1897.  
*A Biographical Sketch of Lord Bowen.* By Sir Henry Stewart Cunningham. John Murray, London, 1897.

*Edwards' Compendium of the Law of Property in Land.* Third Edition. By Wm. Douglas Edwards. Stevens and Haynes, London, 1896. Price £1.

*International Law. A simple statement of its principles.* By Herbert Wolcott Bowen. Putnam's Sons, New York and London, 1896. Price 5s.

*Hunt's Law of Boundaries and Fences.* Fourth Edition. By Archibald Brown. Butterworth and Co., London, 1896. Price 14s.

*The Yearly County Court Practice.* Two Vols. By G. Pitt-Lewis, Q.C., and C. Arnold White. Butterworth and Co., Shaw and Sons, London, 1897. Price 25s.

*Admiralty Jurisdiction and Practice in County Courts.* By F. W. Raikes, LL.D., Q.C., and B. D. Kilburn, M.A. William Clowes and Sons, Ltd., London, 1896.

*Executive Powers in Relation to Crime and Disorder.* By Thos. W Haycraft, B.A. Butterworth and Co., London, 1897. Price 6s.

## Reviews.

*Commentaries on the Constitution of the United States, Historical and Juridical.* By ROGER FOSTER, of the New York Bar, and Lecturer on Federal Jurisprudence at the Law School of Yale University. Vol. I. London: Kegan Paul, Trench, Trübner & Co., Limited. 1896.

To those who would study the Constitution of the United States, we heartily commend this book. The author commences with an introduction, which is brimful of authority and learning, dealing with Paper Constitutions, the anarchy preceding the Federal Convention, preliminaries of the same, prototypes of the same, its models and compromises, with its result. An interesting *précis* of the persecution of John Lilburn, a Puritan, in the Star Chamber, on the charge of importing factious and scandalous books, amongst others, "Litany for the especiall use of our English Prelates" and "The vanity and impiety of the old Litany" follows. Other matters treated in this volume are the three departments of the Government of the United States, Congress in general, the right of suffrage, the Speaker and other officers, the Senate, impeachment, and a well-selected collection of State Trials on the latter subject. So good is the book that we look forward with pleasure to the publication of its next volume.

*Cardinal Rules of Legal Interpretation.* Collected and arranged by EDWARD BEAL, B.A., late Scholar of Trinity Hall, Cambridge, of the Middle Temple, and the South Eastern



Circuit, Barrister-at-Law. London : Stevens and Sons, Ltd. 1896.

The author has endeavoured to collect and arrange in one volume the cardinal rules of interpretation of all legal documents. The attempt had previously been made with regard to the interpretation of statutes, but so far as we are aware, this is the first attempt to enunciate a canon of interpretation for all legal documents. Mr. Beal observes with truth, that the rules of interpretation are scattered in various reports and statutes, and we cannot but praise the labour and erudition which he has bestowed in preparing the succinct work before us. He gives as his authorities the reported words of the Court or Judge in which a particular rule is laid down. The book is divided into eight parts, dealing successively with Case Law, Rules of Legal Interpretation applicable to all Instruments, Contracts, Deeds, Mercantile Documents, Miscellaneous Instruments, Statutes, and Wills, besides an Appendix containing the Interpretation Act, 1889, 52 & 53 Vict., c. 63, and the now repealed Lord Brougham's Act, 1850. It is interesting to note that the *Times* Reports are admitted by Courts, because they are reported by Barristers who put their names to their Reports; but the *Weekly Notes* are not to be cited as an authority. Of the old reports, Plowden (1550-80) is the most accurate of all reporters, while of "Modern Cases in Law and Equity" (1669-1732) the Courts, we are informed, "treated that book with the contempt it deserves." We cannot too highly praise the industry of Mr. Beal, and we are assured by a close examination of his book that it is bound to become a leading text-book on the subject which it treats of.

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*The Preservation of Open Spaces and of Footpaths and of other Rights of Way.* By Sir ROBERT HUNTER, M.A., Solicitor to the Post Office, formerly Honorary Solicitor to the Commons Preservation Society. London : Eyre and Spottiswoode. 1896.

The author has endeavoured to treat of the several descriptions of land, which are subject to Common rights, and how such lands may be protected from enclosure. The peculiarities attaching to Common fields and pastures, and to the Common land of forests, are widely different; it has not always been borne in mind how large a part of England was formerly under

Forest Law, and consequently subject to the exercise of exceptional rights. The author gives a special care to footpaths, as also to fords, towing-paths, cliffs and foreshores. Since the Commons Preservation Society was established, some thirty years ago, these subjects have been better protected, but although improvement has resulted, there is still much to be desired. We are sure that the book will meet with much appreciation, not only at the hands of the legal profession, but of the public at large.

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*Paterson's Practical Statutes* of the Session 1896 (59 and 60 Vict.), with Introductions, Notes, Tables of Statutes, repealed and subjects altered, Lists of Local and Personal and Private Acts, and a copious Index. Edited by J. S. COTTON, Barrister-at-Law. London: Horace Cox. 1896.

The late Session of Parliament has produced a rather smaller crop of Statutes than usual, but all those of practical use will be found carefully edited in their proper places, together in many cases with an editorial preface of their particular design. It is undoubtedly the best collection of Statutes published.

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*Principes du Droit des Gens.* By ALPHONSE RIVIER, Consul-General of the Swiss Confederation, Professor at the University of Brussels, Honorary Professor of the University of Lausanne. Two Vols. Paris: A. Rousseau. 1896.

M. Rivier tells us, that he has endeavoured to prepare a book on the Law of Nations, which may hold a middle place between the already well-known and elaborate works on that subject, and the more succinct treatises of Heffter, Bluntschli, and Bulmerincq. He confesses that he has culled his work from many sources, and very honestly gives us a list of his authorities, among which we are pleased to find the names of W. B. Lawrence, Henry Wheaton, John Westlake, Q.C., and Sir Travers Twiss, Q.C. He divides his compilation into two volumes, dealing in the first volume with the general preliminary notions on the Law of Nations, next with States, then with Territorial Rights including the High Seas, and then with the rights essential to States, and with restrictions raised against these rights by the fact of international comity, and the

representatives and the organisation of States for their foreign relations. In the second volume we have the questions of negotiations and of public acts emanating from governments, conventions, and treaties between States, differences between States and the means of reconciliation, forcible means, such as war, and the laws of war. Dealing with Extradition, he says that some States, "considering with reason that Extradition proceeds from a general obligation of mutual judicial assistance, proceed to grant it without conventions, and under circumstances that conventions have not foreseen; generally, but not necessarily, by way of reciprocity. This is the true system, and the one conformable to the real ideas of international comity and of the duties which it imposes." M. Rivier has laid down in these few words a rule of law which is unfortunately misunderstood by many civilised States, as pointed out in an Article in this *Magazine* in our last issue. Space forbids us to enlarge more fully on the excellences of his book; but *ex uno disce omnes*. It is a truly valuable work, and one which we should like to see translated into the English tongue.

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*Études de Droit International et de Droit Politique.* By ERNEST NYS, Professor of the University of Brussels, Judge of the Tribunal of First Instance, Member of the Institute of International Law. Brussels: A. Castaigne. Paris: A. Fontemoing. 1896.

The author of this work had already contributed much of its substance in the *Revue de droit international et de législation comparée* and in the *Société Nouvelle*. He has now united this valuable information with some additions in the volume before us. The work is at once international and historical; it deals with the political creations of the Middle Ages arising in the immediate contiguity of the Mediterranean; it glances at the relations of the Arabs and the Byzantines, at the Military Institutions of Christian Spain, at the Brehon laws of Ireland and at Denmark, Norway, and other countries of the North. But what more immediately concerns Great Britain is a very interesting chapter on England and the Holy See during the Middle Ages, in which the causes of the Great Charter are very fully and eruditely explained, and the intrepidity of the Barons of England for their rights against both King and Pope is

brilliantly shewn forth. Another chapter on Mediæval England refers to the Constitutions of Clarendon, to the Provisions of Oxford, and to other landmarks of our political Constitution. Other chapters referring to the claim of Pope Alexander VI. to divide the New World between the Spanish and the Portuguese, the Rights of the American Indians, the Slavery of the Negro, and the French Revolution, tend to add more and more to the merits of this learned and well digested treatise. We heartily congratulate M. Nys on his well considered labours.

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*Le Témoignage de la Femme ; L'Épargne de la Femme Mariée ; Les Salaires de la Famille Ouvrière.* By LOUIS FRANK, Advocate at the Court of Brussels, Vice-President of the Universal Feministic Federation. Brussels: H. Lamertin. 1896.

*La Femme contre L'Alcool.* By LOUIS FRANK. Brussels: H. Lamertin. 1897.

These Articles relate to the emancipation of woman. In the first the author considers the incapacity of woman to give evidence, or the disadvantage of her evidence being deemed in many States inferior to that of the man. He contrasts these laws disadvantageously with the Law of England, by which her testimony is always receivable and of the same value as that of the other sex. In his second Article, he refers to the Belgian League for the Rights of Women, founded in 1892 for procuring protection for her savings, and speaks with praise of the Married Women's Property Acts of Great Britain. In his third Article, he proposes protection for the wages of a married woman. In his latest Article of this year, he inveighs against the increase of drunkenness, quoting the words of the Right Hon. W. E. Gladstone:—"Alcohol causes more ravages than pestilence, famine, and war." His arguments are succinct and to the point; he is worthy of all praise for his attempts to stay the above-mentioned evils, which have too long been a disgrace to our vaunted nineteenth century civilisation.

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*Hunt's Law of Boundaries and Fences*, in relation to the Sea-shore and Sea-bed, Public and Private Rivers and Lakes, Private Properties, Mines, Railways, Highways, Canals, Waterworks, Parishes and Counties, Church Lands, Inclosed Lands, &c.

Fourth Edition. By ARCHIBALD BROWN, of the Middle Temple, Barrister-at-Law. London: Butterworth & Co. 1896.

This well-known work has already run into four editions, and continues to hold its own. It is a matter of common knowledge, that a disputed landmark will cause years and years of enmity between two rival landowners; nor in the earliest days of civilisation was this subject considered as of little moment, since the first law-giver Moses teaches us "accursed be he who removes his neighbour's landmark." The editor, who, we notice, has been assisted by Mr. J. C. Swinburne-Hanham, of the Middle Temple, Barrister-at-Law, has endeavoured to observe the proportion due to each of the multifarious subjects which he has treated of; the word "boundaries and fences" encompassing a *vastissimus campus* of sea-walls, fisheries, sewers, encroachments, party-walls, trees, pits, quarries, level crossings on railways, etc., which few books deal with at all. The dates of the decisions are added in a well-digested Index of Cases.

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*The Yearly County Court Practice*, 1897. Founded on "Archbold's County Court Practice," and "Pitt-Lewis' County Court Practice." By G. PITT-LEWIS, Q.C., Recorder of Poole, and C. Arnold White, B.A., of the Inner Temple, Barrister-at-Law. Two Vols. London: Butterworth & Co., Shaw and Sons. 1897.

The first volume of this new Annual Practice deals with what may be termed the ordinary jurisdiction of County Courts under the County Courts Act 1888, the Debtors Act 1869, the Bills of Exchange Act 1855, the Employers' Liability Act 1880, and the County Courts Admiralty Jurisdiction Acts 1868 and 1869, while the second volume deals with the special matters which the Legislature has confided to the administration of County Courts; to these may be added all the County Court Rules to date. The County Court Acts have been so thoroughly probed from time to time by the many writers on the subject, that it is difficult to find any sod of virgin soil not already turned. We notice with pleasure that the learned editors have availed themselves of all that is to be learnt *aliunde*, and have followed it up by adding every new enactment and reported case touching on the subject collated, so as to bring the work up to date. A Table of Statutes, the

same of Consolidated Acts, and the same of Cases materially add to the utility of the work, while an Appendix of Forms, Court Fees, and Scale of Costs render the book more valuable. The second volume contains a vast number of Statutes; some providing for the recovery of penalties, some for the recovery of money, some specially for the settlement of disputes, some conferring an administrative jurisdiction, and others authorizing enquiries in the public interest. As an Annual Practice it is of inestimable worth.

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*International Law. A simple statement of its principles.* By HERBERT WOLCOTT BOWEN. New York and London: Putnam's Sons. 1896.

The author has attempted to compress within 160 pages an abstract of some of the chief rules of International Law. The notes are not very good; in some cases they are inaccurate. Thus, at page 100, he omits Venezuela as one of the Powers who declined to accede to the Declaration of Paris, 1856. At page 101, referring to visitation and search in suppressing the slave trade, he omits all mention of the Brussels' General Act of 1890. Nor is that Act to be found in his list of principal Treaties. Again, among the principal writers on International Law, he omits the name of the great American jurist, Halleck. Other faults might be mentioned. The chief merit of the book is its brevity.

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*Mortuary Law.* By SIDNEY PERLEY, of the Massachusetts Bar. Boston: G. B. Reed. 1896.

The author has chosen a somewhat gruesome subject for his theme. He has collected all the law concerning burial of the dead, beginning with the last sickness and ending with the cemetery. Of course the law cannot be relied on with safety by practitioners in this country. But in many cases the laws of Great Britain and of the United States are similar; while there are often points of practice, yet unadjudicated on in this country, of which the practitioner may obtain a valuable suggestion from an adjudicated case in the United States' courts. The author refers to burial by cremation, but we regret that he does not sufficiently insist on the most natural of all burials, "earth to earth."

*A Compendium of the Law of Property in Land.* By WILLIAM DOUGLAS EDWARDS, LL.B., Barrister-at-Law. Third Edition. London: Stevens and Haynes. 1896.

The fact that this book, which was first published as recently as 1888, has already reached a third edition, is evidence that it has achieved great popularity as a text-book for students. The constant repetition of the words First, Secondly, Thirdly, and the letters (a), (b), (c), are a little tedious to the reader, who has some acquaintance with the subject, but are, no doubt, useful to the student who has little or none. Full justice seems to be done to modern legislation; though it is not quite satisfactory to read "By a Modern Statute," and then to have to refer to a footnote for its date and title. Moreover, if the Act 39 and 40 Geo. III., c. 98, be described as "the Thellusson Act," why should not the Act 20 and 21 Vict., c. 57, be described as "Malin's Act," or as "Malin's Act (No. 2)" as some would prefer?

There is very little, which relates to the law of property in land, of which Mr. Edwards does not tell us something; but a few paragraphs might have been added on the nature of highways and public footpaths. Again the right of inhabitants to use land for purposes of recreation and games ought not to be entirely passed over. The case of *Fitch v. Rawlings*, 2 H. Bl. 393, on this subject is well worthy of notice.

In dealing with cross remainders, Mr. Edwards does not observe that such limitations need not be set out in full in a settlement. The specimen deed given in the 4th schedule to the Conveyancing and Law of Property Act, 1881, shews that they may be created by the words "with cross remainders between them."

Chapter I. of Part I. is hardly up to the high standard of the others. Gavelkind is not properly speaking a tenure; and the words "manor" and "barony" never meant the same thing. These, however, are not matters of great importance, and as a whole the book is well calculated to effect the object for which it was compiled.

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*The Maritime Codes of Spain and Portugal.* Translated and annotated by W. F. RAIKES, LL.D., Q.C. London: Effingham Wilson. 1896.

The compiler of this work has, with much pains, translated the Maritime Codes of Spain and of Portugal; the former came

into operation on January 1st, 1886, and the latter on January 1st, 1889. Both Codes, it is obvious, were much required to replace the older Codes, founded more or less on the *Consolato Del Mare*, the parent of all the maritime codes of the Middle Ages. Some portions of Mr. Raikes' work have already appeared from time to time in this *Magazine*. We cannot but congratulate him on the completion of this volume, which evidences much care and considerable industry. It is one more link in the great study of International Law.

---

*A Treatise on the Admiralty Jurisdiction and Practice in County Courts.* By F. W. RAIKES, LL.D., Q.C., of the Inner Temple, and BURLEIGH DUNBAR KILBURN, M.A., of the Inner Temple, Barrister-at-Law. London: W. Clowes & Sons, Ltd. 1896.

This treatise deals exclusively with the Admiralty jurisdiction now exercised by County Courts under 31 & 32 Vict., c. 71, and 32 & 33 Vict., c. 51. The amount of learning on the subject is really limited to 196 pages, the rest of the volume consisting of an appendix of Acts of Parliament, scale of costs, fees, forms, and an index. In view, however, of the existing large and exhaustive treatises on the subject, it is difficult to know why the writers have compiled the work before us. Of its matter there is nothing blameworthy; the work has been diligently compiled, and possibly may prove useful to those advocates in County Courts who practise in Admiralty, especially to those who prefer the use of a really portable manual. The preface deals in a crude and indigested manner with the ancient jurisdiction of Vice-Admirals of counties, or of the coast, who exercised, through their judges, Vice-Admiralty jurisdiction in all maritime counties, and who, in fact, the writers may be surprised to learn, are still appointed for some maritime counties. This kind of preface was not, in fact, required at all, as the work is not one of an archæological character; but if it were at all needed the writers would have done better to have quoted from the only book on the subject, viz., "The Office of Vice-Admiral of the Coast," by Sir Sherston Baker, Bart.

---

*Executive Powers in Relation to Crime and Disorder or the Powers of Police in England.* By THOS. W. HAYCRAFT, B.A., of the Inner Temple, Barrister-at-Law. London: Butterworth & Co. 1897.

A short work on the powers of the police. The author has endeavoured, with considerable success, to bring into one



volume the law concerning this subject. Mr. Haycraft tells us very largely of the powers of the police to arrest offenders; but we fail to see any allusion, even of the remotest kind, as to the powers of courts of record to punish on indictment, by fine or imprisonment, officers of justice who fail to do their duty. The allusion at p. 10 that constables guilty of neglect of duty may be fined, and the reference in support of this, viz., 45 & 46 Vict., c. 50, is most misleading, for that Act only refers to summary—not indictable punishment—of borough constables; meanwhile he says nothing of any punishment of county constables, or of 2 & 3 Vict., c. 47, s. 14, which provides for the summary punishment of metropolitan policemen. Perhaps he considers that, like Cæsar's wife, such distinguished functionaries should be above suspicion. Again, we notice at p. 30, on the question of disturbing public worship, that the Act 2 My., sess. 2, c. 3, is quoted in support of the arrest of persons who disturb preachers, &c., but seeing that Queen Mary only held Parliament for one year (1554) before her marriage with Philip, it is difficult to understand how such an Act can exist. Probably the author intended 1 My., sess. 2, c. 3, which is undoubtedly a well-known Act and to the point. We trust, however, that the labours of Mr. Haycraft will not be thrown away, and that a new edition will see these minor faults corrected, for there is evidence of work and industry throughout the volume.

*Lord Bowen : a Biographical Sketch, with a Selection from his Verses.*  
By Sir HENRY STEWART CUNNINGHAM, K.C.I.E. London :  
John Murray. 1897.

This is an interesting sketch of an interesting man. The life of a lawyer who becomes a Lord Justice cannot be replete with picturesque adventure, but the biographer has clearly sketched the urban life of the Rugby boy, athletic, capable of "five to leg," eminent in football, not untried in fisticuffs, the Hereford and the Ireland scholar, the Fellow of Balliol, "the Saturday reviler," the keen-witted advocate, the brilliant judge. The story has its pathos. Vigorous of limb as Bowen was, there must have been latent weakness in his constitution. Early in his forensic course his health broke down; again and again prolonged rest was needful, and the end came before he had seen three score years. The book has some amusing revelations.

Those notes which the kind-mannered Lord Justice took, whilst a conscientious counsel was measuring out his small matter, were not always points of the argument ; sometimes they were hexameters.

---

We have received a reprint from the *International Journal of Ethics* of a Paper by Mr. J. Westlake, Q.C., on "International Arbitration," in which he strongly advocates the duty of promoting the same. The subject is treated of in that lucid and thorough manner well known to all those who are acquainted with his writings.

---

The *Canada Law Journal* for December last, a semi-monthly periodical published at Toronto, is now before us. We notice an interesting article on the respective functions of judge and jury in negligence cases by E. F. B. Johnston, Q.C., one of the foremost men of the Canadian Bar. We understand that this journal is the official organ of the Canadian Law Society.

---

We have before us a copy of a Treatise by Alfonso Buzzoni, Advocate of Milan, on the "Popularization of the Laws." It is necessarily written in Italian, but is well worth perusal by those who read that language.

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Among periodicals we notice : *The University Law Review*, of New York ; *The American Law Review*, of St. Louis, Mo. ; *The Harvard Law Review* ; *The Chicago Legal News* ; *The Law Book News*, of St. Paul, Minn. ; *The National Corporation Reporter*, of Chicago ; *The American Law Register and Review* ; *The Canadian Law Times* ; *The Western Law Times*, of Canada ; *The Madras Law Journal* ; *The Law Times*, London ; *The Law Journal*, London ; *Bulletin Mensuel de la Société de Législation Comparée* ; *Annuaire de Législation Française* ; *Annuaire de Législation Etrangère*, Paris ; *Journal du Droit International Privé* ; *La Revue Générale* ; *Revue Bibliographique Belge* ; *Case and Comment*, Rochester, N.Y. ; *La Giustizia Penale*, Rome.



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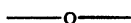
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# THE LAW MAGAZINE AND REVIEW.

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No. CCCIV.—MAY, 1897.

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## Obiter Dicta.

WE are grieved to announce the death of Mrs. Harriet Carmichael, widow of the late Editor of this *Magazine*, Charles Henry Edward Carmichael. She died at Fulham on the 13th day of April last, after a lingering illness.

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The perusal of an interesting article on "Legal Entomology," in the *Law Times* of 24th October, 1896 (by Mr. R. V. Rogers), suggests that there is a considerable amount of literature on the subject of prosecution of the lower animals, and even of inanimate things, for what in the case of human beings would have been called crimes. Mr. Rogers gives instances of prosecution of ants and beetles in Brazil and Italy, the Court going so far as to assign counsel to the insects. The writer has now before him two curious books full of historical detail, the one is modern, D'Addossio, *Bestie Delinquenti* (Naples, 1892). The other is older and very quaint in its title and contents, P. Ayrault, *Des Procès faits au Cadavre* (sic), *aux Cendres à la Mémoire, aux Bestes brutes, Choses inanimées, et aux Contumaux* (Angers, 1591). The earliest recorded instance is perhaps the familiar one in Exodus xxi., 28: "If an ox gore a man or a woman that they die, then the ox shall be surely stoned." In Attica the case of the axe mentioned by Pausanias and Porphyry



is curious. It was arrested and brought to judgment for the murder of the sacred ox of Zeus Polieus, and condemned to be cast into the sea. The legend is fully discussed by Mr. Farnell, *Cults of the Greek States*, i., 56. This and similar cases are also reviewed by Mr. Justice O. W. Holmes, *Common Law*, 7, and by Mr. W. Andrews, *Legal Lore*. The former learned author shews clearly that they proceed from the view that vengeance and not indemnity was the object of primitive delict-process. The owner of the offending thing might get rid of his liability by making *noxæ deditio* in order that the injured person might have something to wreak his vengeance on. The Admiralty procedure *in rem* is perhaps the last survival of the principle in modern English law. Since the abolition of the law of deodand the ship is proceeded against by name, and she carries with her her liability into whatever hands she passes (*The Bold Buccleugh*, 7 Moo. P.C., 267). The principle of the ship as a *noxæ* is expressed in very significant words by Bowen, L.J., in a later case. The learned Lord Justice says: "Damage done by a ship means done by those in charge of a ship, with the ship as noxious instrument" (*The Vera Cruz*, 9 P.D. 101).

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In the course of an article, "De la forme que doivent revêtir les testaments rédigés à l'étranger par des Français," the first instalment of which appears in the *Journal du Droit International Privé*, 1897, p. 78, Professor Maurice Colin states, as a matter clearly settled, that the will of a Frenchman, made and duly attested in the English form in England, is valid in France under Art. 999 of the Code as a testament "par acte authentique, avec les formes usitées dans le lieu où cet acte sera passé." Frenchmen owning property in England will be interested to know that, if M. Colin's statement be correct, the simplest way of

making a testamentary disposition which will be valid as to all kinds of property, whether in England or France, will be to take the opportunity, when in England, of making a will in the English form. Such a will, besides being valid for all purposes in France, will pass immovables in England, which a "holograph" will, wherever made, will not in any case, and a will "par acte authentique" in France will not, necessarily, pass (see Arts. 970-974). It will be valid in England as a disposition of movables whether the Court holds the testator's domicil to be English or French; if English, *cadit questio*,—if French, the testament will be valid, not because *locus regit actum*, but as being in a form approved by the testator's personal law as applicable to the circumstances of his particular case. The fact that the Frenchman was domiciled in England would not, it seems, put his case outside of Art. 999, so far as the application of that Article to a will made by him in England in English form, and sought to be established in France, is concerned (see Art. 1,000, and cf. *In bonis Lacroix*, 2 P.D. 94). It may be added that if the testator had divested himself, under Art. 17, of his French nationality by becoming a naturalised British subject, and then made his will in England in English form, such will would be valid in France as well as in England (*In bonis Lacroix*) *à fortiori*.

---

What is "a pure and unadulterated accident?" Judge Austin at the Bristol County Court on March 23rd last, in the case *Skinner v. Gould*, held that "the case fell into the class of pure and unadulterated accidents." It was a case in which (as appears by the report in a local newspaper) the plaintiff claimed damages for serious personal injuries alleged to have been caused by the negligence of the defendant in having been knocked down by one of defendant's cabs

whilst he was walking on the foot pavement in a public street, when the driver, in order to avoid a tram-car which was coming in the opposite direction, pulled the left rein and swept the plaintiff off the pavement so that he fell under the cab, the horses' feet striking him just above the ankle, and both wheels of the cab passing over his thighs. We should have thought that this was as clear a case of negligence on the part of the driver as could well be imagined. Judge Austin held that "negligence on the part of the driver was not proved, and the case fell into the class of *pure and unadulterated accidents*," and judgment was given for the defendant! It would have been interesting to have heard the opinion of the Judges of the High Court on this new exposition of the law of negligence, had the case come before them on appeal, and perhaps the converse of an *impure and adulterated* class of cases would have been expounded.

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### I.—A WATER COURT.

THE power of the Lord High Admiral of England is not only of a naval character, but is also judicial and ministerial. We are apt to forget this, accustomed as we are to the predominant naval jurisdiction. The same power is still vested in the Commissioners for executing the Office of Lord High Admiral. From very early times, and if we may credit the Black Book of the Admiralty (Vol. I., p. 64), as early as the reign of Henry I., Sessions were held by the Admiral. Again, the Ordinance of Grimsby, which, according to the same authority, was made in the reign of Richard I., evidences that a system of Admiralty jurisdiction was then in full force, that the Admiral was distinctly recognised, that his lieutenants were duly nominated, and that the acts of each and every





of them were of record. The Black Book of the Admiralty is supposed to have been commenced in the reign of Edward III., and to have been continued during the reigns of Richard II. and Henry IV. "When one is made Admiral," says the Black Book (Vol. I., A. 1), "he must first ordain and substitute for his *lieutenants, deputies* and other officers under him, some of the most loyal, wise, and discreet persons in the Maritime Law and ancient customs of the seas, which he can anywhere find." The Admiral is next "to write to all his lieutenants, deputies and other officers whatsoever, throughout all the sea coasts through the whole realm, to know how many ships, barges, balingers and other vessels of war the King may have in his realm when he pleaseth or need shall require, and of what burthen they are, and also the names of the owners and possessors thereof," and "to know, likewise, by good and lawful *inquests taken before the said lieutenants, deputies, or other officers of the Admiralty*, how many fighting mariners are in the realm." The reason of this ordinance was that in case the King or his Council (which he had always about him for advice in matters of law, and who managed the affairs of the Navy) should make enquiries of the Admiral, they might always know what force might be serviceable by sea. Again, it was ordained at Hastings by King Edward I., "and his lords," that "though divers lords had several franchises to try pleas in ports, that neither their seneschals (stewards) nor bailiffs should hold plea *if it concerns merchant or mariner*, as well by deed as by charter of ships, obligations and other facts, though the same amounts but to twenty shillings or forty shillings; and if anyone is indicted that he hath done to the contrary, and be thereof convicted, he shall have the same judgment as above said. *Item.*: Any contract made between merchant and merchant, or merchant or mariner beyond the sea, or within the flood-mark, *shall be tried before the Admiral, and nowhere*

else, by the ordinance of the said King Edward and his lords. Item: Those who are indicted that they hold plea of hue and cry, or bloodshed committed on salt water, within the flood-mark, if they are thereof convicted, they shall be imprisoned for two years and then shall be fined according to the pleasure of the King or the Admiral."

The above words before the Admiral, evidently signify the Admiralty Courts or Sessions, and are not to be restricted to the personal presence of the Admiral. There is no evidence that the Lord High Admiral ever personally presided in his judicial office, although the precepts of *venire facias* to the sheriffs and officers, as also the warrants for proclaiming the Sessions, for bringing prisoners to their trials, for executing such as had sentence of death against them, etc., were in the Admiral's name, and under his seal of office. Neale (*Sea Laws*, p. 6), writing in 1704, refers to this power of the Admiral of appointing deputies for particular parts of the sea coast, thus: "Now seeing the Admiral himself is commonly resident at land, or if at sea, not possible to be everywhere and consequently is not capable of an immediate exercise of this authority on the sea, it has been judged convenient for the entire preservation of his jurisdiction to constitute a Vice-Admiral, with captains to supply his absence; and considering the dignity and difficulty of his office, as well for the aggrandizement of the one as the ease of the other, *he constitutes his deputies for particular parts on the sea coasts*, with coroners to view the dead bodies found on sea or on the coasts." And Godolphin (*Admiral*, p. 41), who wrote earlier (1661), speaks of the Admiral having several officers "of higher and of lower form; some at land, others at sea; some of a military, others of a civil capacity; some judicial, others ministerial." The Admiral had jurisdiction of all causes of merchants and mariners, happening on the sea or in foreign parts within the King's dominions, as also of all crimes within

the above limits, and of all maritime causes where the common law could give no remedy. Where the *lex terræ* does not run, other laws are allowed in many cases, and this is not contrary to Magna Charta. "If," says Coke (2 Inst., p. 50), "any injury, robbery, felony, or other offence be done upon the high sea, the *lex terræ* extended not to it; therefore the Admiral hath cognizance thereof, and may proceed according to the marine law by imprisonment of the body, and other proceedings as have been allowed by the laws of the realm."

The Admiral appointed his deputies or Vice-Admirals for the sea coasts, from the very early times which, we have already indicated, unto the present day. The sea coasts of England and Wales were divided into nineteen circuits, or vice-admiralties, viz.:—1. Northumberland, Durham, and York; 2. Lincoln; 3. Norfolk; 4. Suffolk; 5. Essex; 6. Kent; 7. Sussex; 8. Southampton; 9. Dorset; 10. Devon; 11. South Cornwall; 12. North Cornwall; 13. Somerset; 14. Gloucester; 15. South Wales; 16. North Wales; 17. Chester; 18. Lancaster; 19. Westmoreland and Cumberland. Of these only six are at present filled, viz.:—Lincolnshire, Norfolk, Suffolk, Cornwall, North Wales and Carmarthen, Westmoreland and Cumberland, by the Earl of Yarborough, the Earl of Kimberley, the Earl of Stradbroke, the Earl of Mount Edgcumbe, the Marquess of Anglesey, and Lord Hothfield respectively. "Every Lord Admiral," says Sir W. Monson, "substitutes his deputy or Vice-Admiral in every maritime shire in England, except in such places where the lords of manors challenge a right formerly granted by the Kings of England, as will appear by their grants. These Vice-Admirals are carefully to look that all things be performed that are ordained by the Lord Admiral, and yearly to keep a Court in their several counties, where every man's complaint may be publicly heard." A Vice-Admiral is now constituted or



appointed by Letters Patent of the Sovereign, given in the High Court of Admiralty (Admiralty Division) of England, under the Great Seal. The candidate for the office of Vice-Admiral having previously requested the Commissioners for executing the office of Lord High Admiral to permit him to hold the place, the Commissioners if they think fit so to do, direct their warrant to the Judge of the High Court of Admiralty requiring him to cause the said Letters Patent to issue.

It appears that the accustomed place in Southwark, in the beginning of the fifteenth century, to hold the Admiralty or Water Court, was a quay on the Southwark side of the River Thames; unless the Court of the Admiralty was already held in a building forming part of the ancient church of St. Margaret's-on-Hill, which was destroyed as a church in the reign of Henry I., the parish of St. Margaret's being at that time united to the parish of St. Mary Overy. Stow, in his Survey (A.D. 1598), says, "a part of this parish church of St. Margaret is now a Court wherein the assizes and sessions be kept, and the Court of Admiralty is also there kept;" and Pepys, in his Diary (17th March, A.D. 1663), describes the Court of Admiralty as there sitting. In the Rolls of Parliament (11 Henry IV., No. 61), the Commons complain of persons being summoned by the officers of the Admiral *à Loundres à la Key de William Horton, Suthwerke*. In the reign of Henry VIII., Orton Key, near London Bridge, is mentioned in the Records of the High Court of Admiralty (3rd November, 1541), as its usual place of sitting. The Vice-Admirals held their Courts in the same manner; primarily on the sea shore within the flood-mark. Hence by easy digressions on quays, banks of public streams, where the tide ebbed and flowed, and on the coast of arms of the sea. Three Statutes viz.:—13 Ric. II., st. 1, c. 5, 15 Ric. II., c. 3, and 2 Hen. IV., c. 11, were passed to restrict the encroachment of the Admiral's

Courts on the Common Law jurisdiction, by entertaining causes and complaints which did not appertain to the sea or to maritime matters. Although these statutes restrained the Admiralty Courts from holding pleas of things arising in the body of counties, yet, as Sir H. Spelman observes, it did not restrain the Admiralty from making execution upon the land. The body of the realm, and of every county, are places *accidentally* subject to the Admiralty; therefore the Admiral "may take the body in execution upon the land; and so also may he do the goods by the opinion of the Court" (Brook, *Admiral*, 19 Henry VI., 7); "and," continues Sir H. Spelman, "it is said that at that time the use was for the Admiral's officers to serve their citations upon the land—and great reason, for otherwise their jurisdiction were to little purpose. Upon this reason, also, is the High Court of Admiralty, by ancient use, holden in the body of the county, and so also may the inferior Courts, though the judges many times used to hold them under the full sea-mark; but discretion requires they should be in maritime towns, for the conveniency of the business and ease of the suitors. This, also, I take to be the cause that the Lord Admirals of England, in the patents to their Vice-Admirals, used to grant them that office as well in upland counties adjoining, as maritime, that they might have power to hold Courts and award process thither if need require. So the Vice-Admiral of Norfolk is usually Vice-Admiral of the city of Norwich, &c." This right mentioned by Sir H. Spelman, of holding Admiral's Courts in maritime towns, does not appear to have passed unchallenged. A petition of the Commons, with its answer, of the fourth year of Henry IV. (1402), directs that "the Admiral and his lieutenants do sit to keep their courts in no liberty or town, but only upon the sea coasts or arms of the sea, and that every plea before them may be determined in one place without adjournment."

From some Admiralty records which we have collected, we are now enabled to give a complete account of a holding of a Vice-Admiralty Court. The Judge of the Vice-Admiralty sits on a chair placed on the sea shore below the flood-mark, or as we have said, on the bank of a navigable river, or on a quay; at other times by custom, as we have shown by Sir H. Spelman, in a church, Court, or other building, inland. The Registrar, generally speaking a notary public, sits near him at a table. The Vice-Admiralty Marshal bearing the Silver Oar, emblematical of the jurisdiction of the Admiralty, stands nigh. About them stand the Serjeants or Under-Marshals having charge of the prisoners. A jury of twenty-three men composed of mariners or fishermen are summoned there to make Presentments. The parties to the Civil suits, the prosecutors, and all witnesses are there collected. The procedure of the Court follows the Civil—or Continental—system of the Roman Law, rather than that of the English Common Law; save in the more serious matters when by virtue of the statute 28 Hen. VIII., c. 15, the Common Law must be followed, and then the Judge sits, *qua* a Commissioner, under that statute. An illustration of the holding of a Water Court is given at the commencement of this Article.\*

First, the Vice-Admiralty Judge delivers his charge to the jury. We have a copy of one, found in the British Museum Library, delivered by the Vice-Admiralty Judge of the County of Sussex in 1638. From the internal evidence, it would appear that no Water Court had been held in that county for the preceding twelve years. The charge is a long one.† The Judge charges the jury to present all

\* Designed and drawn by my daughter, Miss May Sherston Baker, from the descriptions in the Vice-Admiralty Records.

† The full text of the charge and many other particulars will be found in my "Office of Vice-Admiral of the Coast." London: Privately printed. 1884. Some few copies may still be obtained of Reeves and Turner, 100, Chancery Lane, London.

pirates, robbers, murderers, felons and thieves that have committed any piracy, robbery, murder, or felony upon the high seas, or within any fresh-water haven, river, or creek, from all bridges next unto the sea, within full sea-mark, or on the sea sands within the jurisdiction of the Admiralty in the County of Sussex, against any of the King's Majesty's subjects, or any other his friends and allies. He further charges them to make presentment of all riots, unlawful assemblies, contempts, routs, trespasses, frays, outcries, bloodsheds, maims, quarrels, menacings or threatenings, weapons drawing, or any other act, crimes, or trespass done and committed against the King's peace and laws of this realm upon the sea or upon any other haven, port, place, river, fresh-water or creek within the above jurisdiction. He also refers to cutting any buoy whereby any anchor is lost, to unlawful nets, to dragging oysters or mussels at times prohibited by the laws and customs of the Admiralty, to all flotsam found, to any lagon, to royal fish taken and not presented to His Majesty, etc. Having delivered his charge, the work of the Court begins. Let us now peruse some of the Records or Protocols entered in the Book of the Registrar of the Vice-Admiralty Court for the counties Chester and Lancaster in 1635. They are written partly in Latin and partly in English. They begin thus :—

“Curia Admiralitatis per comitatus Cestrie et Lancastrie et pertinentium maritimarum earum domini tenta apud ædes Johannis Tilston scitutas in vico vulgariter nuncupato the Eastgate Street infra civitatem Cestrie, coram venerabili viro Mattheo Anderton in legibus barristerio, Commissario sive Judice Admiralitatis predictæ per comitatus predictas, nono die mensis Octobris Anno Domini 1635, presente me Nicholao Ratcliffe notario publico ejusdem curiæ registrario, &c.” This shows that a Court of Admiralty or Water Court for the Counties of

Chester and Lancaster, and maritime parts of their domain, was held at the house of John Tilston, situate in the street commonly called Eastgate Street, within the City of Chester, before the Worshipful Mathew Anderton, Barrister-at-law, Commissary or Judge of the Admiralty aforesaid for the said counties on the ninth day of October, A.D. 1635, in the presence of me Nicholas Ratcliffe, Notary Public, Registrar of the said Court. Henry Darwell and John Low, Constables of the Parish of the Blessed Mary on Hill, appeared and produced the Precept or Warrant to them directed, together with a list of persons summoned and presented by them, and were duly sworn. On the same day, John Johnson, Constable of the Parish of the Undivided Trinity of the City of Chester, did not appear nor sent the Precept to him directed, in contempt of this Court. Whereupon the Marshal of the Court being first sworn that he had delivered the Precept to the said John Johnson, and had warned him to execute the same, and to produce the said Precept on this day and place, the said John Johnson was fined in the sum of forty shillings.

“The Protocols continue thus:—“*Officium Domini merum contrà Thomam Formeby. Presented by the said jury for cutting Richard Blevin his cable. Quo die Dominus mulctavit eum ad summam 13/4.*

“*Idem contrà Robertum Melling, Willielmum Rymmer, Rodulphum Hall, Edwardum Martinn, Thomam Plum, Richardum Higginson, et Thomam Parr. Presented by the said jury for driving carts over cables. Quo die Dominus mulctavit quemlibet eorum ad summam 5/-*

“*Idem contrà Richardum Dwarrihouse, water bayliff of Liverpool. Presented for suffering ballast and lime stones to be cast in the port thereof to the annoyance of shipping. Et Dominus mulctavit eum ad summam 20/-*

“*Idem contrà Johannem Smith de Liverpool. Presented for a quarrel. Et Dominus mulctavit eum ad summam 40/-*

"Idem contrà Jacobum Low. Presented for laying his anchor without a buoy. Et Dominus mulctavit eum ad summam 10/-

"Idem contrà magistrum Ashton de Penkett et Dominum Richardum Brookes de Norton. Presented by the said jury for either of them having an unlawful weirs or fishyard. Quo die Dominus mulctavit eorum utrumque ad summam 40/-

"Idem contrà Willielmum Stevenson et Henericum Brookes de Halebancke. Presented by the said jury for keeping and fishing with unlawful nets and fishyards. Quo die Dominus mulctavit eorum utrumque ad summam 20/-

"Idem contrà Lawrentium Formeby for suing and imprisoning of John Williamson sailor in another Court than this Court of Admiralty. Et Dominus mulctavit eum ad summam 20/-

"Idem contrà Robertum Bond de Toxteth Park for destroying the brood of small fish. Et Dominus mulctavit eum ad summam 13/4.

"Idem contrà Franciscum Pickering de Halebancke for hindering the accustomed passages of ships into Ditton Pool, for quarreling with and offering to kill mariners, for causing men to pay 2/6 for anchorage at the same pool contrary to all former customs, and for putting of ships and other vessels in danger. Et Dominus mulctavit eum ad summam 40/-

"Idem contrà Jacobum Williamson de Alverston who was drowned with a watch in his pocket in October last upon Connsant sands. Quo die Dominus decrevit inquisitionem faciendum et commissionem, &c."

We obtain further information from the Protocols of a Vice-Admiralty Court, held at Manningtree, in Essex, in 1635. They are written in Latin, and I translate them thus: "A Court of Admiralty for the County of Essex, held at Manningtree, on Saturday, the 9th day of the month of January, A.D. 1635, before Master Richard Pulley,

Deputy of the Worshipful Robert Earl of Warwick, Vice-Admiral for the said County, in the presence of George Smith, Notary Public. (Then follow the names of the constables of every parish within the County, who attended to make a return of the defaults justiciable by the Court.) On which day and place the precognition having been made as is customary, and the constables having been called to produce the precept and the list of those summoned by them. From among all and singular appearing these following were chosen as jurors, and were sworn by the Holy Gospels of God as is customary." The jury made no presentments, but at a similar Court held the following year at the same place on Wednesday, the 20th day of April, 1836, the jury having been sworn as above, presented as follows: "To the fifth article we present certain ship's rigging and provision found and taken up in the sea by Roger Coeman, of Harwich, coming from Newcastle. And also we present certain ship's rigging and provision found and taken up by Edward Lee and William Lee of the same place coming from Newcastle. Also we present a fore-mast taken at sea by Hugh Paine, of St. Oseth, and now in the possession of William Lumley, of St. Oseth, carpenter, worth five shillings." We have several others before us.

By virtue of Charters, an Admiralty jurisdiction was conferred on many boroughs,\* the Mayor and Magistrates acting as the Admiralty Judge; this jurisdiction of boroughs was abolished in 1835, by S. 108 of the Municipal Corporations Act. The Water Court latest held was in the Borough of Saltash,† on July 27th, 1885, probably being

\* Admiralty rights are also enjoyed by private persons, by virtue of being Lords of Manor. Thus the family of Lord Mount Edgcumbe, as Lords of the Manor of Bodrugan (Cornwall), have a right to wreck of the sea, which extends as far as a man can ride on horseback into the sea at low water, and reach with a spear.

† For an account of this Court, see the *Law Magazine and Review* for May, 1895.

held with regard to matters happening within the Liberty of the Water Tamar, without the precincts of the Borough, and thereby falling without the mischief of the Act of 1835.

There is, however, nothing to prevent Water Courts from being still held by Vice-Admirals of the Coast, or rather by their duly appointed Judges.

THE EDITOR.

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## II.—FAMINE AND THE ADMINISTRATION OF THE LAWS IN INDIA.

A CALAMITY of incalculable magnitude has befallen our Indian Empire, where millions of Her Majesty's subjects are enduring the pangs of hunger, many of whom have already succumbed to their privations, while many more seem doomed to perish from the same cause during the next few months. Lord George Hamilton, addressing his constituents on the 17th February last, said :—

“ There are 300 millions of people, 80 per cent. of whom derive their whole subsistence from agriculture, and the agriculture of the country is dependent on the fall of rain at certain periods of the year. If the rain does not come there arises not only the scarcity of food but the cessation of employment. The area affected by the present dearth is larger than has been similarly afflicted during the present century.”

Besides the sufferings of the people, which credible witnesses describe as literally appalling, the administration of the country becomes partially disorganised during these visitations, owing to the best officers of the Government being called away to distribute food to starving multitudes, and prevent gratuitous relief being given to those who may still be in a condition to undergo some labour in return for a pittance.



In the famine of 1877-79 the deaths exceeded six millions, and the tract of country affected by the present visitation being much more extensive, the mortality may likewise be greater.

Irrespective of the mortality and the misery which famine inflicts on the people, it casts very heavy financial burdens on the State, crippling the Government in the performance of its functions and aggravating the condition of the afflicted people who have ultimately to bear those burdens through additional taxation. In 1880 the Under Secretary, in his statement in Parliament, informed the House that the Indian Government had, in the recent famine, spent £13,000,000 in famine relief, and sustained a loss of £9,400,000 in land revenue rendered irrecoverable through the effects of the famine.

Under these ominous circumstances it becomes imperative on Parliament to inquire into the causes of this great calamity, with a view of ascertaining if a remedy cannot be devised for averting similar visitations in future.

Some years ago a notion prevailed that great irrigation works tending to counteract the effects of drought, would put an end to famine in India; and many millions of money, borrowed by the Indian Government, were spent in the construction of such works. The experiment, however, completely failed to produce the expected result, while it seriously aggravated the situation by permanently burdening the people with increased taxation for the discharge of interest on the capital sunk in the works. This lamentable result of the irrigation scheme was exposed by Lord Salisbury in 1877, in the following terms:—

“If you spend money rashly in irrigation works, which will not pay and cannot be used by the inhabitants, the interest of that ~~due on noised~~ <sup>due on noised</sup> of taxes, which must in ~~the~~ <sup>the</sup> account money must be found out of ~~the~~ <sup>the</sup> taxes, which ~~May, 1895.~~ <sup>May, 1895.</sup> the main be levied on the peasant; and the end will be that, in order to save him from famine which comes

once in twenty years, we will crush him under the increased burden of taxes which come upon him every year. Depend on it, the true remedy to famine and scarcity is, the frugality of the people. The people ought, in years of plenty, to make money enough to lay up against these times of famine."

The sound principle thus proclaimed by his lordship narrows the scope of the suggested inquiry into a single question, namely—what militates against the exercise of frugality and thrift among a people universally acknowledged to possess those virtues in an eminent degree, when their exercise is most powerfully called for by the danger of famine? The answer (which is doubtless known to all who have observed events in India) is that—"the cultivator, except in the districts where the land tax has been permanently fixed, has, as a rule, no savings to lay up." The soil he cultivates is fertile; but he is not allowed to remove the crop he has raised until fiscal demands, amounting to nearly the value of that crop, have been satisfied; and the cultivator thus finds himself compelled to seek the aid of the money-lender, and lives in chronic indebtedness and poverty. The accuracy of this statement is borne out by numberless official documents, a few extracts from which may suffice to elucidate the situation.

"The margin left for the cultivator's subsistence is less than the value of the labour he has expended on the land. This district has the benefit of water communication by both the Ganges and the Jumna; it is intersected by the East Indian Railway, and is partly traversed by the Ganges Canal; yet the land is only worth five years' purchase, and the state of the average cultivator is one of hopeless insolvency and misery." (*Collector of Cawnpore on the land assessments.*)

"This district has been much mismanaged, and unauthorized charges and illegal modes of duress have prevailed

very extensively. The revision of the Settlement took place at a period when the disposition to over-assess was far from being allayed. It is impossible in districts so greatly injured by oppressive assessments that the evils which have arisen can be redressed at one operation. No slight benefit will have been gained if the Government are convinced of the actual loss of money which is certain to follow over-assessments." (*The late Mr. Bird's report on the district of Budaon.*)

"The over-estimate of the capabilities of the Deccan acted upon by our early Collectors drained the country of its agricultural capital, and accounts for the poverty and distress in which the cultivating population has ever since been plunged." (*Blue Book on the Deccan Riots Commission, 1878, page 10.*)

"The Government has read with much concern the opinion expressed by the Collector as to the undue pressure of the revised rates, in consequence of which a large quantity of land has been put up for sale in default of revenue, much of which found no purchasers." (*Government Minute on the Report of the Collector of Sholapur for 1872-73.*)

"These circumstances justify me in placing the excessive enhancement of the assessments as the special cause which has disturbed the relations of debtor and creditor in the Poona and adjoining districts." (*Sir Auckland Colvin's Report as Member of the Deccan Riots Commission.*)

From these extracts (and many others equally authentic might be cited to the same effect) it will be seen that oppressive taxation has long been a characteristic of our Indian administration; and the following case shews that the sway of that immoral tendency has been powerful enough to override all sense of fairness in the Executive and the very authority of the laws enacted by ourselves.

At the periodical revision of the land assessments in the Bombay Presidency in 1870, a cultivator finding that

the revised tax imposed on his farm greatly exceeded the maximum fixed by a Government regulation having the force of law, appealed to the District Court for relief.

It becomes necessary here to explain that the Law Courts in India (excepting the four High Courts established in the Presidency towns) are presided over, not by independent judges and trained lawyers, as in civilised countries, but by Revenue officers of the Government, controlled by the Executive and dependent for their advancement and welfare on the pleasure and good-will of the Government. Judges thus situated cannot be expected willingly to decide against the Government whom they are bound to obey. At all events in the present instance the cultivator's suit was dismissed notwithstanding the evidence by which it was duly supported. An appeal lay at the time from the decision of the District Court to the High Court of the Presidency; but the cost of such an appeal placed the privilege beyond the means of the bulk of the cultivators. The aid of sympathising friends, however, enabled the plaintiff in the suit in question, to lay his case before the High Court of Bombay where, the evidence he adduced having been duly examined, the assessment on his farm was pronounced to be illegal. Thereupon the Government introduced in the Legislative Council of the Governor-General the *Bombay Revenue Jurisdiction Bill*, removing all revenue matters and the conduct of Revenue officers from the cognizance of the Law Courts and vesting Revenue officers with judicial powers and authority to adjudicate in such cases. The member in charge of the Bill said in its defence: "If every man is allowed to question in a Court of Law the incidence of the assessment on his field, the number of cases which might arise is likely to be overwhelming."

This Bill, which constituted an Executive officer the judge of his own acts and of those of his subordinates

when their legality was disputed, was obviously contrary to good principle, and was most likely to be opposed by the non-official members of the Legislative Council. Their exclusion from the sitting was therefore secured by the Government, by the Council being convened for that particular occasion, contrary to invariable custom, at Agra, where the non-official members could not attend. The Bill was therefore passed only by official members, and their speeches on the subject betrayed the significant facts that the measure did not enlist their approval, and that their votes were given simply in obedience to the orders of the Secretary of State, as conveyed in his despatch of 24th November, 1870, saying :—"The Government must hold in its hands the power of requiring the Governor-General to introduce a measure, and of requiring also all the members of his Government to vote for it."

The *Bombay Revenue Jurisdiction Bill*, passed in Agra in 1873, received the Viceroy's assent only in 1875, a delay which the public ascribed to hesitation on the part of His Excellency to sanction so anomalous an enactment. Meanwhile the *Northern India Rent and Revenue Bills* were passed by the Council, extending similar provisions to the vast provinces, portions of which are now a prey to famine. These three enactments have effectually stripped land-owners and cultivators of their constitutional right to apply to the Law Courts of their country for redress in respect of over-assessment and other wrongs suffered at the hands of Government servants. Thus Lord Salisbury's proclaimed opinion as to the true remedy for famine in India has remained a mere formula, an abstract principle, which is entirely ignored and is impugned by the Indian Government, with the result that vast and fertile provinces and industrious and thrifty populations are now being desolated by a "famine of almost unexampled extent and severity." (Lord G. Hamilton, 22nd March, 1897.)

In 1770 a famine occurred in Bengal, in which a third of the population is said to have perished; and Lord Cornwallis who, shortly afterwards, investigated the causes of the calamity, arrived at precisely the same conclusion as that which Lord Salisbury subsequently proclaimed, namely, that in an agricultural country the people ought to make in times of plenty money enough to lay up against times of dearth. Lord Cornwallis perceived moreover that the oppressive assessments enforced in India absorbed almost the entire produce of the soil in favourable seasons, leaving to the cultivator barely enough for his subsistence and no surplus to lay up against times of scarcity. He therefore fixed the Government demand on land in perpetuity and established independent Courts of Judicature for the protection of the people against illegal demands made by fiscal officers. The marvellous success of the measures he inaugurated for the purpose has long been a matter of history, and the horrors of famine have been unknown for nearly three-quarters of a century in the districts where the Permanent Settlement Regulations of 1793 have been observed. Those measures present a startling contrast to our Indian administration of the present day, as the following statements contained in the Preamble to Regulation II. of 1793 will shew :—

“All questions between the Government and the landholders respecting the assessment and collection of the public revenue have hitherto been cognisable by Revenue Courts, where the collectors of revenue preside as judges. The proprietors can never consider their rights and privileges as secure whilst Revenue officers are vested with these judicial powers. It is obvious that if the regulations for assessing and collecting the public revenue are infringed, the Revenue officers themselves must be the aggressors; and that individuals who have been wronged by them in one capacity can never hope to obtain redress from them

in another. Government must divest itself of the power of infringing in its executive capacity, the rights and privileges which, as exercising the legislative authority, it has conferred on the landlords. The Revenue officers must be deprived of their judicial powers. All financial claims of the public, when disputed under the regulations, must be subjected to the cognisance of Courts of Judicature superintended by judges who, from their official situations and the nature of their trusts, shall not only be wholly uninterested in the result of their decisions, but bound to decide impartially between the public and the proprietors of land. The collectors of revenue must not only be divested of the power of deciding upon their own acts, but rendered amenable for them to the Courts of Judicature, and collect the public dues subject to a personal prosecution for every exaction exceeding the amount which they are authorised to demand on behalf of the public, and for every deviation from the regulations prescribed for the collection of it."

The conclusions deducible from the statements in the foregoing pages may be summarised as follows:—

The severity of the famine which periodically devastates some part of India is due to the poverty and destitution of the bulk of its inhabitants and to their consequent inability to tide over the temporary period of the visitation. The natives of India are eminently frugal, industrious and thrifty; and it was doubtless through the exercise of those national virtues that their ancestors succeeded in amassing the great wealth for which their country was long renowned. Their actual poverty must therefore be ascribed to circumstances which hinder them from obeying their saving and thrifty disposition—a conclusion which is confirmed by our District officers, whose reports attribute that poverty to ~~oppressive~~ taxation, chiefly in the form of over-assessments of the land tax.

The only parts of India which have long been and still are exempt from the horrors of famine, are the districts where the land tax is fixed in perpetuity, and, where independent Courts of Judicature protect the people against illegal demands of fiscal officers. In the rest of India it is utterly vain to expect that famine can be averted so long as the agricultural classes, that is, the great bulk of the population, are reduced to live from hand to mouth, that Revenue officers preside as judges in Law Courts, and that the Indian Legislature is made to enact unprincipled measures favouring the exercise of arbitrary power and the enforcement of illegal claims by the Executive.

J. DACOSTA.

### III.—SOME REMARKS ON THE SITUATION IN CRETE.

ARE we returning to the Middle Ages? Is Europe going back to the picturesque confusion of the days when personal law had scarcely yet been supplanted by territorial? Has, perhaps, a new crusade been set on foot, and an instalment of its heterogeneous chivalry reached the scene of so many irregular exploits of their old-time predecessors? Or what then is the meaning of those six Standards floating over Canea?

Such might be the questions which would occur to the mind of a voyager by the coasts of Candia, who had been isolated for a while in the Arctic regions or elsewhere, from the current of affairs. What the answer should be we cannot at present say. But the reason which would be given by most people for the strange phenomenon would be that the foreign troops had been landed and were exercising jurisdiction, in the first instance, for the preservation of order and the protection of property. And it is,



to say the least, remarkable that that reason should be so generally accepted as sufficient.

Whether these forces landed without objection on the part of Turkey or not, is not to the point. It is sufficient that they did not do so by the request of that State, nor as its agents; but their Governments assumed to undertake the maintenance of order on their own responsibility: and that this appears to be widely regarded as a proper step. It cannot be pretended that the occupation of Canea is a mere anomalous proceeding, legalised by the necessities of the case. Self-preservation is, doubtless, a principle known to International Law; but it does not extend to authorise occupations of territory after this fashion. And dangerous questions are best settled by a strict adherence to legality. The real reason why the proceeding is regarded without disapproval seems to be that it is a mere extension of the *bout de siècle* practice of landing sailors for the protection of the subjects of their respective States in times of disorder, and for the protection of consulates. *Prima facie*, the presence of organised bodies of foreign troops within the territory of a State is an illegality; much more, if they proceed to keep order by force. On the other hand, it may be argued that a consul is entitled to maintain the inviolability of the consulate. Between these two conflicting principles, some middle course satisfactory alike to those who are anxious to preserve intact the inviolable character of the territory of nations, and also to the upholders of the right of active interference in foreign territory, in defence of the official and unofficial subjects of the interfering State, would be the ideal rule of law. But, so far as appears, very few writers determine any such rule.

Looking for a moment at the two competing principles as stated above—the inviolability of territory and the ~~protection~~ protection of officers and subjects abroad—an enquirer cannot but be struck with the extreme disparity in

importance between them. We need not dilate on the paramount necessity of preserving intact the absolute inviolability of the dominions of States if our system of International Law is not to be shaken to its foundations. Once let it be established that for reasons of expediency, or as a so-called peaceful measure of self-redress, a State is entitled to invade the dominions of another, a principle of anarchy will be admitted into politics totally inconsistent with the fundamental postulate of International Law, based, as it is, on the territorial independence of nations. That a new law might be worked out on the new lines indicated by the admission of such a principle is possible. That, for our familiar circle of Powers, each developing its genius and energies in its own fashion, we might have in exchange the autocracy of a clique of diplomatists, or the supremacy of a dominant State, might be an advantage to the world, though opinions will doubtless differ as to the immediate desirability of such a metamorphosis. But the system of law which has been worked out on the basis of the territorial independence of nations with such elaboration and, on the whole, with such deeply beneficial results, would have vanished for ever, in the process of substituting a world-empire, or a set of tribal sovereignties, for the territorial sovereignty with the conception of which the fabrics of that system is bound up. And in the chaos which would ensue, much would happen of a more serious character than the trivial or conjectural dangers which induce politicians to permit their armed forces to act in foreign territory with a self-approving consciousness that they are the instruments of preventing alarming disturbances, that they are not at war, and are only improving upon that most ridiculous of all pretensions, "a pacific blockade." The support which is accorded to the notion of the "hegemony of the Great Powers"—which inevitably implies the more or less

immediate dictatorship of the greatest—by persons who arrogantly apply the term “criminal” to the conduct of States which exercise their rights without regard to the policy which for the moment commends itself to the Powers in question, is one sign of change, and points to the substitution for independent territorial sovereignties of a world-sovereignty, or empire; but there is also another feeling to be considered, equally subversive of the principle of territorial independence, although pointing in quite a different direction, namely, that of tribal sovereignty. If followed to its logical extreme, the principle of nationality leads to the conclusion that individuals are justiciable only by the organised tribunals of their nationality, and are subject only to its laws, whatever local portion of the earth’s surface may be for the moment honoured by their presence. From this point of view the land which is actually occupied by the bulk of a race is a matter of quite secondary importance. Signs of the practical influence of this tendency are to be seen in the extreme prominence and influence which the personal statute has at the present day; as exemplified by Italian legislation, and, in Conservative England, by such judgments as that in which the Privy Council’s Judicial Committee broke away from the doctrine of *Niboyet v. Niboyet*.

Whether a return to the system of Imperial Rome or Macedon, or to the inglorious anarchy of tribal independence, would be an improvement on our present methods of government, we do not here discuss. Only it is desired to emphasize the fact that, whether difficult or easy, the transition to either plan would be accompanied by the total and entire failure of International Law to accommodate itself on any terms to the new conditions.

The principle of territorial independence has lain at the root of the public law of the world since the days of Hugo de Groot, and so long as no substitute for our present Law

of Nations has been worked out, no steps can be tolerated which would render that law at once inapplicable by falsifying its fundamental assumption. So we have to consider whether the principle of territorial sovereignty is seriously impaired by the recognition of the legality of landing troops or sailors, though in small numbers, in foreign dominions upon emergency. Unbiased consideration—unless an admiration of the system by which various forms of human activity can exist and develop side by side, each in unquestioned security, can be termed a prejudice—will probably lead to the conclusion that it is. In the first place, the spectacle of a foreign military force exercising authority, under whatever circumstances and for whatever purposes, on the soil of a State, is enough to create, in the minds of the subjects of the latter, an impression that their own Government is not really independent. They feel that it has not that unlimited authority which they have attributed to it, but that it is liable, upon occasion, to the interference of foreign officials, and that not as an act of war, which everyone can understand, but as a measure of public order taken, to all appearance, in the exercise of some regular reserve jurisdiction.

The mass of the population do not draw delicate distinctions. Foreigners, they notice, step in and keep order when matters come to a head. The inevitable conclusion is that, when it suits them to do so, they will step in sooner. The authority of the State is at once lowered, if not undermined, in the estimation of the unreflective body over whom its maintenance is of the utmost importance. Besides this—although the symbolic influence of the absolute immunity of territory upon the populace is surely, in these days, important enough—there is a further consideration of practical gravity. This lies in the unfortunate tendency of armed forces, when once they have obtained a footing on land to remain there. Examples, not few nor unimpressive,

of this danger are the commonplaces of history. That of late there have been less frequent occasions of its occurrence is due to the very fact that nations have now for many years regarded the presence of foreign troops within their jurisdiction with peculiar jealousy. But it is still possible to instance cases in which a purely temporary occupation has run out into one to which no definite limit can be put. France threw troops into Chantabûn during the difficulty with Siam, to secure the fulfilment of a temporary purpose, which was carried out years ago; yet the tricolour still floats there. The forces of the same nation entered Tunis to exact satisfaction for an outrage—they remain there until the French Government and the Bey recognise by common consent that the Government of the latter is capable of maintaining order; *i.e.*, so far as appears, until the Tunisian calends. Lastly, there is the case of Corea; there the Russian troops which were landed to guard the consulate of that empire must surely have been an important, if not a decisive, factor in the events which have given to Russia a share with Japan in the suzerainty of the distracted Hermit kingdom. In fact, the consequences arising from the admission of troops are nowhere more strikingly illustrated than in the whole course of proceedings in Corea from the moment that Japan claimed the right of sending soldiers there. China's treaty troops, Russian marines, detachments from a miscellaneous collection of Western ships of war, all combined to overshadow whatever genuine Government Corea possessed.

It may be objected that these instances are all concerning States which are outside the inner circle of European diplomacy. Still, this does not affect the facts. The proposition that the intrusion of an armed force for a limited or temporary purpose is dangerously likely to lead to its use as a political engine, or to result in the undue

prolongation of its visit, would remain the same if such States as Corea and Tunis—not to speak of Siam—had absolutely no rights at all. And the most narrow interpreters of the scope of International Law will scarcely refuse to these nations the right to exist.

To turn to the other side of the question, foreigners who visit a strange country have usually the option of remaining at home; they go, as a matter of fact, prepared to take the risks of travel and those of residence in a land of unfamiliar customs and uncertain tranquillity; or, if they rely on their knowledge of the place, and on their own favourable opinion of its safety, they can blame themselves alone, if their opinion turns out to be incorrect, and their knowledge limited. Such residents abroad have probably some idea that their own Government will do what it can to induce the authorities of the foreign State to treat them fairly, but they cannot expect that it will furnish them with direct protection by the use of force in the actual territory of the latter.

As to the protection of consulates similar remarks apply. These offices are, to a large extent, mere business agencies, and no harm can be done to them so serious as to justify the step of taking the duty of protecting them out of the hands of the territorial authority. The risk of confusing the limits of State jurisdiction which arises when organised bodies of foreign troops take it upon them to enforce order in a disturbed district, makes the advantages of such a proceeding seem small in comparison. The immediate effects of the presence of the force may be beneficial, but the ultimate results are anarchic.

Besides, foreign detachments might work without objection, under the supervision and at the orders of the executive authorities of the place. In this case they might be accompanied by the latter, or in some other open way make it clear that their action is

subject to their controlling direction ; for instance, by making frequent reports to them, or by displaying the national cockade. Upon this suggestion, however, the question arises whether such a loan of troops would be legal if made to a State which happens to be at war with another ; and the point may at the same time be considered whether an unasked landing of troops for the suppression of disturbances is compatible with the duty which the Government which takes such a step owes to abstain from affording military assistance to the enemies of the State in the dominion of which the disturbance has arisen.

The problem is essentially the same in either case. If the interference of the neutral was unasked it is more likely that the step was not taken out of an unfriendly spirit to the other belligerent ; but this is not a matter of any importance, for a State is bound not to assist another which is at war with a third.

Whether these considerations have any bearing upon the events at present occurring in South-Eastern Europe, it is not intended here to discuss. The fundamental position of the existence of war between Greece and the Porte is itself matter for a volume. The present paper is only directed to pointing out two sources of danger which may become serious if steps are not taken to settle the law in their regard.

TH. BATY.

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#### IV.—MASTERS IN THE CHANCERY DIVISION OF THE HIGH COURT.

THE change of the designation of the officials known as the chief clerks into the older title of Masters, will probably, looking at the history of the substituted title, not be received with unmixed feelings of satisfaction, yet it is most likely intended thereby to convey to the public that the holders of the title are in only a limited sense clerks; while, like the somewhat similar officials, the Masters in the Common Law Divisions, "the old faces under a new name," exercise a jurisdiction of much importance to the suitors entitled to the property valued at many millions of pounds, which, as the expression is, is "in Chancery." One difference between the new and the old "Masters" is unquestionably that while, at any rate during the later period of their existence, the former Masters were barristers, the chief clerks have been invariably selected from the solicitors' branch of the legal profession.

"The man in the street" has, generally speaking, been rather nebulous as to the principles, officials, and procedure of the equity side of the Courts, but a reference to its history shews that the Masters have attracted a considerable share of public attention, and, it must be confessed, that the reasons for the interest of the public in the office have been little creditable to the holders of it, or to those having authority to confer it upon them. Its history is one, however, commencing in remote antiquity. The assertion has been made, whether on reliable authority may perhaps be doubted, that the earlier Masters advised the Saxon Witan and the Council under the Normans and earlier Angevin sovereigns of the country. Coming to a later period and more dependable authority it may be stated that all



writs for the commencement of legal proceedings were issued from the *Office of the Chancery*, i.e., of the Lord Chancellor, and, to assist him and furnish the appropriate writs to the suitors, a certain numbers of clerks, called *præceptores* (afterwards *Masters*), who were the king's officers, and took an oath for the due performance of their duties, were, according to Mr. Spence's "*History of the Rise of the Court of Chancery*," appointed. They were invariably ecclesiastics, Doctors of the Civil Law. There were, in addition, other clerks belonging to the Chancery, known as the Six-Clerks, who, *temp.* Edward III., issued the writs of course (*de cursu*), and had acquired the name of *Cursitors*,—hence the name of the street to the east of Chancery Lane,—an office abolished in 1843. Chief among the Masters was the clerk or *Custos* of the Rolls, an office which has survived with great, independent, judicial and other authority until the present time. Some of these Masters for a long course of years sat upon the Bench with the Lord Chancellor for the purpose of giving advice with reference to the case being heard if applied to. The Masters were, after the reign of Edward IV. until the Lord Chancellorship of Lord Brougham, appointed by the Chancellor placing a velvet cap on the head of the official to be appointed. Lord Keeper Coventry, in the reign of Charles I., issued a series of orders for reforming abuses in the Court of Chancery, the most important of which related to the Masters' offices, and after the South Sea Bubble in 1720, it was found that many of the Masters in Chancery had, to indemnify themselves for sums paid for their places, speculated in that scheme with the suitors' trust-money in their hands; the deficit being found, according to Lord Campbell, to amount to more than £80,000. Lord Macclesfield's fine of £30,000 was applied to make up a part of this sum, the remainder being recouped by a temporary tax on proceedings in

the Court. Finally, in 1852, the office of Master in Ordinary was abolished, except so far as related to proceedings then before them, as to which it has been said that, if it was necessary to sacrifice a Jonah to the whale of popular opinion, probably the most suitable victims were selected. The Chancery Judges were at the same time authorised to appoint chief and junior clerks for the purpose of assisting in the general business of the Court, and the Judges order what matters shall be investigated by their chief clerks, either with or without their assistance. The system upon the whole has worked well, but it may be doubted whether the framers of the change contemplated business of such magnitude as at present being transacted by the officials then appointed.

W. P. PAIN.

#### V.—A QUESTION OF LEGITIMACY.

THE question which I propose to consider will probably seem to many to be of little practical importance for two reasons: the first, that the peculiar combination of facts on which it can arise is not, in the nature of things, likely to happen often; the second, that the state of authority on the point is such as in all probability to deter a person interested in challenging the correctness of that authority.

The question, shortly stated, is this:—A., a person domiciled in a country where the doctrine of *legitimatio per subsequens matrimonium* obtains, marries B., who has had, before the marriage, a child, C., by him. At the time of the conception and birth of the child, A. was domiciled in England, or some other country where the doctrine above referred to does not prevail. Will the English Courts

hold C. to be legitimate or illegitimate? The question is to be dealt with as uncomplicated by any international difference of view as to the nature of the marriage contract, or the capacity of parties to contract it, and the intercourse resulting in the birth of the child is postulated as having taken place *inter solutum et solutam*.

The point seems to have arisen only once in England for direct decision—in *In re Wright's Trust*, 2 K. & J. 595; 25 L.J. Ch. 621 (1856, Wood, V.C.)—though it has on several occasions been the subject of judicial *dicta*. I think it is not rash to say that before the case last mentioned such authority as existed on the point was in favour of the legitimacy of C., that the learned Vice-Chancellor failed to observe that this was so when he decided against the legitimacy, and that the later *dicta*, which are all in favour of the Vice-Chancellor's view, were uttered on occasions when the precise point neither needed nor obtained a critical investigation. Let us take first the history of the question before the case of *In re Wright's Trust*; it will, I think, be found to lie in very small compass. I have not found any case, Scotch or English, in which the question was even indirectly dealt with, of earlier date than 1840, when the Scotch cases of *Dalhousie v. McDouall*, 7 Cl. & F. 817, and *Munro v. Munro*, Ib. 842, were disposed of by the House of Lords (Lords Cottenham, L.C., and Brougham).\*

As Wood, V.-C., in his judgment in *In re Wright's Trust*, attached much importance to the authority of the French jurists, whose meaning I think he missed, I venture to

\* Cotton, L.J., in his judgment in *In re Goodman's Trust*, 17 Ch. D., at p. 293, professes to find something on the point and in favour of his own view in the opinion delivered by Alexander, C.B., in *Doe v. Vardill*, 2 Cl. & F. 571, but, with the greatest deference, I must say that I have searched that opinion carefully without finding any language which throws any light on the question or shews it to have been in any way considered.

quote two passages, which seem to have escaped his attention.

Boullenois, tom. I., tit. 1, c. 2, obs. 4, after discussing certain cases in a passage which the reader will find set out in Burge, I., pp. 105, 106, and deciding against the legitimacy of "un enfant Anglois, né en Angleterre d'un concubinage, et dont les père et mère Anglois seroient venus demeurer en France, et y auroient été mariés *sans s'y être fait naturaliser*," proceeds, "Si depuis la naissance de cet enfant, né en Angleterre de père et mère Anglois, *les père et mère s'étoient fait naturaliser en France, eux et leur enfant*, et qu'ils eussent depuis contracté mariage, faudroit-il dès lors regarder cet enfant comme légitimé par le mariage subséquent? J'estimerois l'affirmative. Ma raison est que dès que les père et mère et leur enfant ont été naturalisés, ils sont rendus participants de tous les droits ordinaires, et le droit commun de la nation. . . . Ce que j'estimerois encore dans le cas où le mariage auroit été contracté en Angleterre, si les père et mère se font naturaliser avec leur enfant en France." Merlin, *Questions de Droit*, s. v. *Légitimation*, § II., commenting on this last sentence, says: "Mais qu'entendait-il par là? Il avait parfaitement raison, s'il voulait dire qu'une fois les père et mère Anglais, naturalisés en France avec leur enfant, en quelque lieu qu'ils le célébrent, fût-ce même en Angleterre, conférerait à leur enfant les avantages de la légitimation, et c'est ce que j'établirai dans un instant. Mais s'il voulait dire que les lettres de naturalisation, obtenues en France par les père et mère après la célébration de leur mariage en Angleterre, emportaient rétro-activement la légitimation de leur enfant, même naturalisé avec eux, il était complètement dans l'erreur."

There was, therefore, from the point of view of these distinguished writers, no absolute bar to the legitimation of a child born in England of English parents. Of course,

in *In re Wright's Trust*, the short facts of which I shall state presently, it would have been extremely proper to enquire whether the French law of that date required the change of nationality referred to by Boullenois and Merlin, as an indispensable condition, and whether, because it did not take place, the child whose rights were in question would have been held illegitimate in France. This question answered, the duty of the English Court would have been, I submit, to take the answer as deciding the status of the child for all purposes.\* Of the modern foreign text-writers Savigny and Bar are of opinion that the domicil of the husband at the time of the marriage should determine the question of the effect of the marriage in legitimating *antenati*. See Savigny, *Conflict of Laws* (Guthrie), p. 250, quoted in Westlake, § 192, Bar, *Private International Law* (2nd edition, Gillespie, p. 434). These opinions appear to be shared by Scotch text-writers of eminence; see Erskine, *Principles*, 18th edition, by Rankine, p. 607, Bell, *Principles*, 9th edition, by Guthrie, §§ 1627, 1628, and see *Bell's Dictionary and Digest*, 7th edition, by Watson, s. v. *Legitimation*. The language of the French Civil Code, Arts. 331-333, is too general to justify any inference as to the views of the draftsmen upon our point, but it appears from *Goodman v. Goodman*, 3 Giff. 643 (1862, Stuart, V.-C.), that under the Code as administered in Holland in 1821, a child

\* What the French law applicable to such a case is I do not presume to say. I observe that in a recent article, "Du rôle international du domicile," in the *Journal du Droit International Privé*, 1897, at p. 19, M. A. Chausse, Professo of Law at Montpellier, seems to be of opinion that in no case can an Englishman, even when admitted to domicil under Art. 13 of the Code legitimate an *antenatus* by his marriage, because, under a system "qui fait dépendre le statut personnel de la nationalité, cet étranger privilégié ne pourra réclamer le bénéfice d'institutions inconnues ou proscrites dans sa patrie." Whether the French Courts uniformly take this view now-a-days I do not know. It does not seem to square with the decision in *Lloyd v. Lloyd* abstracted from Dalloz in 13 Beav. 401, n.

whose case resembled that of the child in *In re Wright's Trust* would be regarded as legitimate; see also the judgment of Cotton, L.J., in *In re Goodman's Trusts*, 17 Ch. D., at p. 291. This case is important, because the facts clearly shew that the exact point must have been apprehended by the foreign advocates whose opinion was taken. I am afraid that no definite argument can be drawn from the interesting case, to which I shall have to refer later, of *In re Grove*, 40 Ch. D. 217, as to the law of Geneva on the point, as it does not appear on what grounds, or on what view of domicil or nationality, or on what finding of fact, if any, the decree of legitimation, mentioned as granted by the Council of Geneva, was based.

In *In re Wright's Trust* the facts were that a widower, domiciled in England, migrated to France under circumstances which did not involve a change of domicil, and there cohabited with a Frenchwoman, who bore him a daughter. Subsequently the man's domicil became French, and after this change, he married the mother of the child in the English form at the British Embassy, and (some years later) in French form, with recognition of the child. It is only fair to the Vice-Chancellor to say that he was not satisfied that at the time the parents were married there was that recognition of the child which is required by the French law. This circumstance does not seem, however, to be the main ground of his decision. The question was, whether the daughter could take with the children by the father's first marriage under a bequest to the father's "children." It is extremely difficult, in the compass of a short article, to deal satisfactorily with this long judgment, the logical train of which is not convincing, and which contains much matter the relevance of which (I speak with respect) is not easy to see. With the *Questions de Droit* before him, the Vice-Chancellor misses the passage which was really significant; with *Munro v. Munro* before him, he

fails to notice the *dicta* of the Scotch judges and of Lord Brougham, and the references in the argument to Boullenois, which would have put him upon the track of relevant matter. As the result of his researches in French law, he comes to the conclusion, (which may be correct, for reasons already indicated by me, but not observed upon by the Vice-Chancellor), that the French Courts would have held the child in question illegitimate (p. 613).

The Vice-Chancellor, in allowing himself to attach so much importance to the fiction of a matrimonial contract before the conception of the *antenatus*, did not sufficiently appreciate the force of the extract from Pothier which he quotes (p. 604), or of the Scotch case of *Kerr v. Martin*, 1840, 2 D. 752, which had been cited to him. The fiction seems to be discarded by modern Scotch writers, and the law is stated to be based on views of expediency and morality. I also venture to think that the effect of *Lloyd v. Lloyd*, already referred to, is not correctly given by the Vice-Chancellor, that *Doe v. Vardill*, 7 Cl. & F. 895, does not throw any light on the question, and that *Shedden v. Patrick*, 1 Macq. 612, so far as it has any bearing on the point at all, is an authority which inclines against the rationale of the doctrine of *legitimatio per subsequens matrimonium* which found favour with the Vice-Chancellor. It is worth mentioning that the Vice-Chancellor, at the end of his judgment, adds some arguments which read like a forecast of his decision, seven years later, in *Boyes v. Bedale*, 1 H. & M. 798, since thoroughly discredited by *Skottowe v. Young*, 11 Eq. 474, *In re Goodman's Trusts*, 17 Ch. D. 266, and *In re Andros*, 24 Ch. D. 637, and *In re Grey's Trust*, 1892, 3 Ch. 88.

In 1862, the case of *Goodman v. Goodman* (3 Giff. 643) was decided by Stuart, V.C., but neither it nor *In re Goodman's Trusts* (14 Ch. D. 619, 17 Ch. D. 266) can be regarded as a satisfactory authority for the proposition of

law which *In re Wright's Trust* purports to decide, because the children were not represented. In 1869, the Scotch case of *Udny v. Udny* (L.R. 1 H.L. Sc. 441), was decided by the House of Lords, and Lord Hatherley (then Lord Chancellor) took occasion, at p. 448, to reiterate, *obiter*, the conclusion which he had arrived at, as Vice-Chancellor, in *Re Wright's Trust*. The other Lords, (Chelmsford, Westbury, and Colonsay), said nothing upon the point. In *In re Goodman's Trusts*, 1881, the C.A. (Cotton and James, L.J., Lush, L.J., diss.) reversed Jessel, M.R., deciding that the child born after the change in the father's domicile, but before his marriage, whose contention had prevailed with Stuart, V.C., was entitled to share under the Statute of Distributions with her sister born after the marriage in the distribution of the estate of a domiciled Englishwoman. The Court disapproved of a *dictum* of Wood, V.-C., in *Boyes v. Bedale*. In *In re Andros*, 24 Ch. D. 637 (1883), Kay, J., in deciding that a gift in an English will to the children of a person domiciled in Guernsey, was to be taken as made to his legitimate children as ascertained by the law of his domicile, and that an *antenatus*, legitimated by the subsequent marriage of his parents, could take, declined to follow *Boyes v. Bedale*. Our point did not arise, but in the course of his judgment Kay, J., took occasion to observe: "It must now be treated as settled that any person legitimate according to the law of the domicile of his father at his birth is legitimate everywhere within the range of International Law for the purpose of succeeding to personal property." This is qualified by *In re Grove*. Later the learned Judge, in language of some ambiguity, said: "The law, as I understand it, is that a bequest of personalty in an English will to the children of a foreigner means to his legitimate children, and that by International Law, as recognised in this country, those children are legitimate whose legitimacy is established by the law of the father's domicile." In



*In re Grove*, 40 Ch. D. 216 (1887, Cotton, Fry and Lopes, L.JJ., affirming Stirling, J.), the question turned on the domicil of a Genevese who had married and died in England. Cotton and Lopes, L.JJ., held that the man was domiciled in England at the date of the birth of the child, and *a fortiori* at the date of the marriage of the parents. Fry, L.J., held that the father had not lost his Genevese domicil at the date of the birth, but had exchanged it for an English domicil before the marriage. All were agreed that the marriage of a domiciled Englishman could not be held to legitimate *antenati*, whatever the domicil of the father at the date of the birth had been. "In the absence of authority," said Cotton, L.J., at p. 232, "the incidents and effects of a marriage must, in my opinion, depend on the domicil of the parties at the time of the marriage." Taking "domicil of the parties" to mean, *quoad* our point, "domicil of the husband," I venture to suggest that both Scotch and foreign jurists would agree that this is correct, but it does not seem quite consistent with other statements in the same judgment, *e.g.*, "What is really necessary, I think, is that the father should, at the time of the birth, be domiciled in a country allowing legitimation, so as to give to the child the capacity of being made legitimate by a subsequent marriage" (p. 232), and, "In my opinion, the domicil at birth must give a capacity to the child of being made legitimate, but then the domicil at the time of the marriage, which gives the status, must be domicil in a country which attributes to marriage that effect" (p. 233). Fry, L.J., while professing to agree generally with the law laid down by Cotton, L.J., added, rather ambiguously, "At birth the child took the domicil of its mother, and it took the status of illegitimacy, according to the law of the domicil of its mother, and it took also the capacity to change that status of illegitimacy for one of legitimacy, provided that, according to the law of

the domicil of the father, the subsequent marriage would work legitimation."

It hardly needs to be stated that it is a public evil that the same person should be regarded as legitimate in one civilised country and illegitimate in another. It is perhaps a greater scandal when a British subject is held legitimate in one part of the Empire and illegitimate in another. In his judgment in *In re Goodman's Trusts*, James, L.J., devotes some very energetic observations to this aspect of the question. It is, of course, impossible always and altogether to avoid these evils, so long as communities differ on the "forbidden degrees" and the extent of each other's jurisdiction in divorce.

The case, however, of a marriage recognised on all hands as having been validly performed between competent contracting parties is different, and the denial of legitimacy to some, while it is conceded to others, of a group of *antenati*, all of whom are legitimate by the personal law of their father—as in the *Goodman* case—does not seem to be justified on any ground of morality or jealousy of jurisdiction. When the domicil of the husband at the date of the marriage is proved to be not English, the English Courts forthwith discard the characteristic rules of English law as to the incidents and effects of marriage, and proceed to apply other rules. Antecedently, one would have said that the only logical course to take was to enquire what consequences the law of the husband's domicil attached to his marriage, so far, at all events, as status of persons and rights in movables were concerned. Such a rule seems to be justified by considerations of good sense and international comity. But for *In re Wright's Trust*, and the other cases referred to, one could say that it was the rule of the English Courts. If the law laid down in *In re Wright's Trust* and incidentally approved in the other cases is correct, it seems that in the case of the marriage of a domiciled foreigner the law to be

applied by the English Courts is neither the *lex fori* nor the law of the husband's domicil, but *tertium quid*. In such a case as that of the Goodman family the tests of English law would have made all the children, save those born in wedlock, illegitimate. Tested by the law of the husband's domicil at the marriage, all, it seems, were equally legitimate. Tested by the *tertium quid*, one of the *antenati* was legitimate, the others not. The practical result is that the English Courts not only impose on themselves the labour of ascertaining the husband's domicil at the time of the marriage, which is inevitable, and the legal consequences of the marriage of that person, according to the law of the country of domicil, but also the seemingly gratuitous labour of enquiring into, and drawing conclusions from the man's previous history, though the personal law of the husband declines the enquiry and disregards the conclusions. I venture to think that it is sufficient, the foreign domicil of the husband at the time of the marriage being proved, to ascertain, by evidence of foreign experts or otherwise, what effects the law of the country of domicil attached to the marriage, and to concede those effects so far as status of persons and rights in movables are concerned.

I am not prepared to say that an argument of some plausibility might not have been framed against the legitimation, *per subsequens matrimonium*, of the bastard child of a domiciled Englishwoman, on the score of its deriving its domicil of origin from her, and it is singular that no weight seems to have been attached to this circumstance in cases in which it occurred ; see *Munro v. Munro*, 7 Cl. & F. 842, and *In re Goodman's Trusts*.

The notion that no child is legitimated by the subsequent marriage of its parents, unless it received a capacity for legitimation derived from the putative father's domicil at the time of conception or birth seems to me to have originated in Vice-Chancellor Wood's view of the doctrine

of *legitimatio per subsequens matrimonium*, as being based on the fiction of a marriage prior to the conception. It may well be that this is so historically, but there seems good reason for thinking that, even in Scotland, the fiction had been practically discarded before 1856. That the doctrine of *legitimatio per subsequens matrimonium* should be still held not to apply to children born *ex damnato coitu*\* is probably an instance of what is not unknown in legal history,—a rule originally based on reasons of one kind being retained and justified by reasons of another kind, the first set of reasons having been discarded as not squaring with modern modes of thought. If, then, this fiction be discarded, what reason is there for regarding the domicile of the husband, and his resulting personal law, at any other time than the actual date of the marriage? There is no other “act in the law” on which the question of legitimation can depend, and, if the English Courts are prepared, for the purpose of determining status of children and rights in movables, to regard, in any particular case, the personal law of the husband at the date of the contract, the only reasonable and consistent course seems to be to apply it thoroughly.

If a case like *In re Wright's Trust* could come up in 1897 as *res integra*, I think the Court would adopt a *ratio decidendi* which would not expose this country to the reproach of “standing aloof in barbarous insularity from the rest of the civilised world.” What we stand to gain by the authoritative disapproval of the principles enunciated in *In re Wright's Trust*, and reiterated in the *dicta* in *Udny v. Udny*, *In re Goodman's Trusts*, *In re Andros*, and *In re Grove*, is the ability to state a rule of that chapter of English Law which treats of “private international” relations in terms which

\* The capacity to marry must exist at all events at the birth. This is Lord Fraser's opinion with regard to the law of Scotland; see *Parent and Child*, p. 36.

will have the academic merits of simplicity and consistency, and the practical merits of promoting substantial justice between parties, and commanding the approval of the Courts and lawyers of other communities.

T. K. NUTTALL.

## VI.—CURRENT NOTES ON INTERNATIONAL LAW.

### The Pacific Blockade of Crete.

A good deal of misconception has arisen from the use of the term "*Pacific Blockade*." A "Blockade" is an act of one of two belligerent States precluding neutral ships from having access to, or egress from, a particular enemy port or coast. It is essentially a belligerent privilege directed primarily against neutrals, and, like the right of visitation and search and the doctrine of Contraband, the right to Blockade is a concession by neutrals to belligerents, arising out of the fundamental principles of Neutrality. A "Pacific Blockade," on the other hand, is essentially a belligerent or quasi-belligerent act of coercion directed not against neutrals, but against the State coerced. M. Perels, in his admirable article in the *Revue de Droit International* (Vol. 19, p. 244, *et seq.*), says: "Le Blocus pacifique n'est autre chose que la fermeture des portes ou des districts particuliers de la côte d'un pays en dehors du cas de guerre déclarée et dans le but d'empêcher les relations commerciales maritimes." Professor T. E. Holland, in a recent letter to the *Times*,\* in reply to an anonymous correspondent†, rightly says that it is "one of the various methods generically described as *Reprisals* . . . by which, without resort to war, pressure, topographically or

\* *Times*, 7th March, 1897.

† *Times*, 5th March, 1897.

"otherwise limited in extent, may be put upon an offending "State." Any such operation is not, of course, "Pacific," except in a comparative sense. As Reis Effendi said, after Navarino, in his reply to the assurance that the Great Powers were still at peace with the Porte: "C'est "absolument comme si, cassant la tête d'un homme je "l'assurais en même temps de mon amitié." The term "Pacific," in short, is merely a diplomatic amenity. The anonymous writer of the letter to the *Times*, above referred to, points out what he regards as two observations applicable to all historical instances of Pacific Blockade, namely—(1) that the Blockade has always been instituted by a strong Power to coerce a weak one, and "there is no instance of one of the Great Powers of the world employing such measures against another of like strength"; and (2) that the "majority in number and the most weighty in authority" of International Jurists have regarded the practice as indefensible. With regard to the latter of these considerations, no doubt many writers have condemned Pacific Blockade as contrary to International Law, but the real ground of objection has almost always been against such a Blockade purporting to bind or affect neutral or quasi-neutral States or subjects. The objections of Hautefeuille, Pistoye and Duverdy, Woolsey, Gessner, Fauchille and De Martens, are entirely based on this aspect of the question. Geffcken, in his reply to M. Perels' paper, was also mainly influenced by the same considerations, though he seems to object also on general moral grounds. The views of all these jurists and the conflicting views of such authorities as Heffter, Calvo, Cauchy, Bluntschli, Wharton, Ferguson, and others, are excellently summarized in the above-mentioned paper of M. Perels, the reply of M. Geffcken (see the *Revue*, Vol. 19, p. 377, *et seq.*), and an article by M. Bulmerinq in the *Journal de Droit International Privé*, for 1884 (p. 569).

Hall also has a capital note upon the point, in his "International Law," § 121. (See p. 386 *et seq* of the 4th Edition.) The best evidence of the views held by the majority of jurists is, however, to be found in the series of Resolutions passed by the Institute of International Law, at the Heidelberg meeting of 1887.\* The general effect of these is to admit what seems to be indisputable, namely, that Pacific Blockade as a form of Reprisals, is perfectly legitimate, provided it is not allowed to affect or prejudice neutrals or third parties.

There have no doubt been instances of so called Pacific Blockade, in which a claim to affect neutrals has been raised, or even in a few instances exercised. This claim, however, was candidly admitted by Lord Palmerston, in the La Plata affair of 1846, to be untenable, and was strongly repudiated by Lord Granville in 1884, in connection with the Franco-Chinese "état de représailles." It was not even asserted in the most famous modern precedent, the Blockade of the Greek Ports by the Great Powers, in 1886. A full consideration of these cases will be found in the article on "*Some Recent Incidents in International Law*," in Vol. XIV. of this Review, pp. 127-137. In this paper we also anticipated the first proposition which was put forward in the anonymous letter to the *Times*, to which Professor Holland replied as above mentioned. We stated that two principles underlay all the recorded instances of Pacific Blockade, *i.e.*, (1) that the Blockading State was always overwhelmingly more powerful than the Blockaded one, and (2) that "the object of the Blockade has always been "either to obtain satisfaction by means falling short of war, "for some damage caused by the other State" (as in 1831,

\* See the *Annuaire de l'Institut*, 1888, p. 301, and see article on "*Some Recent Incidents in International Law*," in this Review, Vol. XIV., pp. 127-137; and a recent article by Mr. T. Baty, on "The Institute of International Law and Pacific Blockade," in our number for August, 1896.

1838, 1850, 1862, 1879, etc.), "or to influence the conduct of "such other State" (as in the Greek Blockades of 1827 and 1886, and the present Blockade of Crete).

The fact is, that the first of these two principles follows *ex hypothesi* from the very nature of Pacific Blockade. It is only a State immensely superior in power which can indulge in reprisals of any kind without provoking war. Reprisals of every form, including Pacific Blockade, are really a belligerent act, and necessarily constitute a *casus belli*, if the State against which they are directed could reasonably resist or retaliate. Hence the idea of a Pacific Blockade of the ports of one Great Power by another is absurd upon the face of it. Such a thing would inevitably be followed by immediate and complete hostilities on both sides. When, however, a Great Power or a combination of several Great Powers wish to coerce a comparatively insignificant State they can do so with the utmost impunity and knowing that there can be no material resistance. In such an event there is no need of a regular war. Such was the case in 1886 and in every other recorded instance of "Pacific Blockade." The fact, however, cannot reasonably be adduced as an argument against the legitimacy of this particular form of Reprisals or Coercion. If a complete war can be avoided by Pacific Blockade or any other means of redress, it is difficult to see that either International Law or the broadest principles of humanitarianism are in any way infringed. The one material objection is avoided if it is assumed that no Reprisals of any kind can be recognised as directly binding third parties.

Mr. Baty in his recent article in this Review\* quotes numerous authorities to shew that Pacific Blockade is in fact not merely a *casus belli*, but actual *Bellum*, and he

\* "The Institute of International Law on Pacific Blockade," L.M. & R., August, 1896.



appears to treat this as an argument against the validity of such a Blockade. The distinction is one without much difference. It takes two parties to make a war, and if a particular coercive act is sufficient to effect the object of one party without provoking counter hostilities on the part of the other, it is difficult to see in what respect such an act is opposed to International Law. The argument of Mr. Baty seems, on the contrary, to entirely justify Pacific Blockade, except as regards its name. If the act is to be regarded as an actual operation of war, it necessarily follows that a Blockade in the proper sense of the term is legally justifiable, even as against neutrals.

The political expediency or moral defensibility of the present Blockade of Crete need not be here discussed. The avowed object appears to have been much the same as in the case of the Greek affair of 1886, although in the present case the Powers have not succeeded in their object. In the Cretan affair, however, there are several novel points of interest. In the first place it is to be observed that the Powers are blockading territory nominally subject to Turkey as a means of coercing Greece. This aspect of the case has not, we believe, been previously discussed. Theoretically speaking, as the "Blockade" is undertaken with the consent of the Porte, the case is not strictly one of "Pacific Blockade" at all. Any State can, if it chooses, close its ports to external commerce, subject, of course, to the risk of commercial or other retaliation. So far, therefore, as the Blockade operations are conducted by the Powers within the territorial waters of Crete, and with the consent of Turkey, the curious result above referred to seems to follow. On the other hand, if the overthrow of the Ottoman authority in Crete by the troops of Colonel Vassos or by the insurgents can be regarded as a *fait accompli*, then perhaps the affair may be treated as an ordinary case of Pacific Blockade.

The Government notification of the Blockade as published in the *London Gazette* of March 19th, 1897, is a somewhat curious document. It is dated from the Foreign Office, and runs as follows :—

“ It is hereby notified that the Admirals in command of  
“ the British, Austro-Hungarian, French, German, Italian,  
“ and Russian naval forces have decided to put the Island of  
“ Crete into a State of Blockade commencing on the 21st of  
“ March at 8 a.m.

“ The Blockade will be general for all ships under the  
“ Greek Flag.”

“ Ships of the six Powers, or *neutral* (*sic*) Powers, may  
“ enter into the Ports occupied by the Powers and land  
“ their merchandise, but only if it is not for the Greek troops  
“ or the interior of the Island. These ships may be visited  
“ by the ships of the International fleets.

“ The limits of the blockade are comprised between  
“ 23° 24' and 26° 30' longitude E. of Greenwich and 35° 48'  
“ and 34° 45' north latitude.”

It is observable that neutral (or as they should more properly be called *quasi-neutral*) vessels are not, as in 1886, entirely exempted from the Blockade. This is a very serious omission, and it is rumoured that for this reason the United States Government has formally declined to recognise the Blockade. Probably, however, no restrictions on the vessels of any State other than the Great Powers or Greece were intended to be or will in fact be enforced. The *Gazette* notice reads as if it were a naval rather than a diplomatic composition. It is also noteworthy that no indication is officially given of the penalty for breach of Blockade. In 1886 the sole penalty was temporary “detention” without compensation, and this was the only sanction recognised as permissible by the Institute in 1887. One Greek vessel appears to have been sunk by an Austrian man-of-war, in the present Cretan affair, but no claim for

compensation has been made or suggested. What effect the formal declaration of war between Greece and Turkey will have upon Crete remains to be seen. Theoretically, perhaps, it should at once operate to dissolve the Blockade, but the Powers having occupied Crete will probably insist upon the Island being excluded altogether from the sphere of hostilities. It is quite certain, however, that the proposal to extend the Blockade to Greece itself must now be considered abandoned.

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#### The "Costa Rica" Packet Arbitration.

British experience of arbitrations has, ever since the *Alabama* affair, been singularly unfortunate. The recent award of Professor de Martens in the case of the *Costa Rica* Packet, following on the Behring Sea success, entitles us to hope that the tide of British reverses has at last been stemmed.

The facts in the latest case occurred so long ago as 1891. Captain Carpenter, a British subject, and master of a New South Wales vessel called the *Costa Rica* Packet, in the course of a voyage in East Indian waters, came across a derelict Malay prahu on the High Seas laden with arrak and brandy, but with no person on board. Deeming it abandoned, he boarded the prahu, and sunk it after having removed the cargo, which he subsequently sold. On the arrival of his ship at Macassar, in November, 1891, Captain Carpenter was arrested by the Dutch authorities, detained in prison for a long period in spite of offers to give heavy bail, and after being subjected to great indignities was eventually released owing to the Macassar Court holding that it had no jurisdiction to try the case.

Demands for compensation were made and refused, but after protracted negotiations between the British and Dutch Governments the dispute was, by a Treaty of the

16th May, 1895, referred to the arbitration of Professor de Martens, the distinguished Russian jurist.

Professor de Martens made his award in writing on the 13th February, 1897,\* declaring that the Dutch Government was liable for the acts complained of, and, estimating the damages by way of indemnity as follows: £3,500 to be paid to Captain Carpenter; £1,600 to the officers and crew of the *Costa Rica* Packet, and £3,800 to the owners of the ship, with interest at 5 per cent. from the 2nd of November, 1891, the date of the original arrest. The arbitrator also awarded £250 to the British Government by way of costs.

The reasons for the award are stated at length, and are very interesting. Professor de Martens begins by reciting: "that the right of sovereignty of the State on the sea "adjacent to the land is determined by the range of a "cannon at low water; that on the high sea even merchant "ships constitute detached portions of the territory of the "State whose flag they carry, and consequently are only "judicially liable for acts committed on the high sea, to "their respective national authorities; that the State has "not only the right but the duty also to protect and\* "defend, by all the means authorised by International Law, "its subjects abroad, when they are the victims of arbitrary "proceedings or breaches of law committed to their "prejudice; that the Sovereignty of the State and the "independence of its judicial or administrative authorities "could not be upheld by the arbitrary suppression of the "legal security which ought to be guaranteed as much to "strangers as to the subjects in the territory of all civilized "countries."

The award then goes on to find as matters of fact that the prahu was seized by Captain Carpenter, "incontestably "outside the limit of the territorial sea of the Dutch Indies,"

\* See *Times*, 24th March, 1897.

and that the Act was cognizable, if at all, only by British Tribunals; also that "the treatment inflicted on Captain "Carpenter in the Macassar prison was not justifiable in "the case of a subject of a civilized State who was detained "on an accusation, and that consequently this treatment "entitles him to a just compensation."

It is noteworthy that Professor de Martens explicitly abandons the old principle of the "Marine League" limit of jurisdiction over Territorial Waters. This is probably the first formal International declaration, in which the more modern view advocated by the Institute of International Law\* in 1891 and 1894, has been explicitly enunciated.

Looking at the main question on its merits, several considerations are at once suggested. In the first place, the principle of extra territoriality upon the High Seas, is, of course, liable to certain exceptions, the chief of which is the case of Piracy. If the proceedings of the *Costa Rica* had in fact been piratical, nothing more could have been said on the matter. The Batavian authorities would have been justified throughout. In arresting a foreign subject, however, for an offence alleged to have been committed outside their jurisdiction, they must be taken to have assumed the risk of consequences in case their charges failed to be substantiated. Their position, in short, was very analogous to that under English Law of a private citizen who arrests another without warrant on bare suspicion. If his suspicions prove unfounded, he has exposed himself to a claim for damages. In the present case, the Dutch authorities themselves confessed the groundlessness of the charge by abandoning the prosecution.

In the next place, the mode of conducting the whole proceedings was, as the arbitrator pointed out, "not "justifiable in the case of the subject of a civilized State."

\* See L.M. and R., Vol. 17, p. 245, and Vol. 19, p. 318.

The arrest and detention were based on no reasonable grounds, and the actual treatment of Captain Carpenter was unnecessarily harsh.

It is to be observed that the case is not like those which have occasionally happened, in which an alien resident is injured by the acts of unauthorized private persons. In such a case, no claim for indemnity would reasonably lie against the Foreign Government unless (1) there were no remedy by recourse to the ordinary judicial tribunals and (2) the Government were indirectly responsible through not using due diligence to prevent the acts complained of. (See various instances and views cited by Wharton: Digest, Vol. II., § 223 and § 226, especially cases of damage done by mobs.)

In the present case, the wrong was done by the Government authorities themselves, and as it was without good cause shewn, it was clearly in accordance with International comity that compensation should be given. It is undoubtedly true that aliens must as a rule submit to the laws of the country in which they reside, but in what Hall\* calls "exceptional cases" constituting "grievous oppression," or what Phillimore† calls "flagrant injustice," it is open to the complainant's Government to exact reparation.

There was an interesting article last year in the *Revue de Droit International*, Vol. 28, No. 4, by M. Bles, a Dutch Jurist, in which he sought to shew that no claim for indemnity was sustainable by International Law. In the course of his paper he curiously enough referred to Professor de Martens as an authority in support of his contention.

There are two earlier incidents on record which bear some sort of analogy to the present case, *i.e.*, the English

\* See *International Law*, V., ch. 3.

† See *International Law*, 3rd edition, § 87.

case of *Macdonald*, in 1860, which is referred to by Calvo in his *Droit International*, 3rd edition, p. 361, and the American case of *Cutting*, which is discussed in the *Revue de Droit International* for 1888, p. 559, *et seq.*

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### Property of Foreign Lunatics.

In the recent case of *In re Linden, De Hayn v. Garland*, 1897, 1 Ch. 453, it appeared that Baroness von Linden, who was the daughter of a German father, and of German nationality and domicil, and resident in Bavaria, had been judicially declared a lunatic by the Royal Court of Bavaria. The effect of the Judgment was to make the lady a ward of Court, and to vest her property in "the Deposit Commission of the Court." The present application was made by the members of the Deposit Commission for payment out to them of a fund standing in the English Courts to the credit of the lunatic, and representing a share to which she was entitled under the marriage settlement of her parents.

*Stirling, J.*, held that the case was distinguishable from *In re Barlow's Will*, 36 Ch. D. 287, and that as the decree of the foreign Court virtually operated as a transfer to the Deposit Commission, of the lunatic's property, the English Court had jurisdiction to order payment as requested, and under the circumstances ought to do so.

The point is dealt with by Dicey, in his "Conflict of Laws," under rules 135 and 136, and by Westlake in § 10 of this work. • The former refers to the law upon the subject as "not thoroughly well established," but quotes such cases as *Newton v. Manning*, 1 Mac. and G. 362; *In re Garnier*, 46 L.J. Ch. 788, as shewing that at all events the Court has a discretionary jurisdiction. The present decision appears to have been based upon the assumption that the foreign decree was in effect an actual assignment of property, and this is the ground which Dicey (see

pp. 508, 509) apprehends to be the true basis of a foreign curator's right to sue here for the lunatic's property. It is to be observed that Lindley, L.J., *In re Brown*, 1895 (2 Ch.) 671, had already pointed out the special grounds upon which *In re Barlow* was decided.

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#### Foreign Land and the Statute of Frauds.

An interesting question arose in the case of *Rochevoucauld v. Boustead*, 66 L.J. N.S. Ch. 74. The action was for a declaration that the defendant held certain land in Ceylon as trustee for the plaintiffs. Amongst other defences, it was pleaded that the trusts alleged could not be proved by any writing signed by the defendant, and therefore that the action was barred by sect. 7 of the Statute of Frauds. The Court of Appeal upheld this particular plea. Lindley, L.J., said: "Having regard to *Leroux v. Brown*, and to the "language of sect. 7 of the Statute of Frauds, we are unable "to see why the defendant should not be able to rely on "that Statute as a defence to any proceedings in this "country, having for their object the proof and enforcing "of a trust, even of lands abroad. The Statute relates to "the kind of proof required in this country to enable a "plaintiff suing here to establish his title here. It does "not relate to lands abroad in any other way than this; it "regulates procedure here, not titles to land in other "countries."

The decision seems in every way consistent with the principle of *Leroux v. Brown*, 12 C.B. 801. (See Dicey, p. 518, note 4, and Westlake, § 208.)

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#### Foreign Judgments in rem.

The judgment of *Henn Collins, J.*, in the case of "*Minna Craig*" *Steamship Co.* dealt with in our last issue has since been affirmed by the Court of Appeal. See L.R. 1897



(1 Q.B.) 460. All the judgments go upon the ground, that the judgment of the German Court was *in rem* and therefore conclusive in our own Courts. "It is a declaration as to "the status of the ship, binding upon everybody, and no "English Court can impeach it." (Lopes, L.J., at p. 468.) It is to be observed that no fraud or actual want of jurisdiction was alleged, and although "it was suggested that "the German Statute did not authorize the Court to do "what they did: it was clearly for that Court to construe "the Statute of their own country and decide accordingly." (Esher, M.R., at p. 464.)

JOHN M. GOVER.

## VII.—FURTHER NOTES ON INTERNATIONAL LAW.

### The Concert of Europe.

THE events which are taking place in the Levant bring into prominence the entity known as the "Concert of Europe." The five older Powers forming that Concert and the latest addition to them, viz., Italy, have been endeavouring by the application of the principle introduced into International Law at a comparatively recent period, and which is known as "pacific blockade," to prevent the wide reaching effects upon the Eastern question of the outbreak of war between Turkey and Greece.

\* \* \*

### Historical Examples.

The situation raises several interesting questions as well with regard to the agency by which compulsion was being attempted to be put upon the two would-be belligerents, as with respect to the means which were being employed; the latter being regarded not only from the point of view of

their validity as an accepted principle of International Law, but also as to their effect with regard to American, and possibly Asiatic, States. To deal, in the first place, with points arising with regard to the power which applying force to one end of the International lever was to result in peace between Turkey and Greece at the other. After the *débâcle* of the first Napoleon, three of the great nations of Europe (Austria, Prussia, and Russia) who had suffered from the scourge of the wars caused by his ambition, formed a Concert, which appears very nearly to be a prototype of that at present existing. This was known as the "Holy Alliance," and its principles, as enunciated by its founders in the Declaration made after the Congress of Aix-la-Chapelle in 1818, did not aim at forcing internal, organic, or legislative changes upon European States, the potentates composing it binding themselves never to depart, as regards each other and each other's subjects, from the strictest observance of the Law of Nations, and the balance of power according to the *status quo* then existing. Its declared object was the maintenance of peace.

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### The Holy Alliance.

Soon after this Declaration, Lord Castlereagh said, in his note upon the affairs of Spain, that the right of intervention consists in a state of things in a foreign country which threatens other States with that direct and immediate danger which has always been, at least by Great Britain, regarded as constituting the only case which justifies foreign intervention. The Holy Alliance after deciding upon intervention in the affairs of Naples, and in the Spanish revolution after the Congresses of Troppau, and Laybach, and Verona, proposed to intervene between Spain and her revolted colonists in Cuba, this led, in part, in 1823, to the

declaration of President Monroe, known as the Monroe doctrine. Mr. Canning had proposed to the President a combined Declaration against such intervention, and the message to Congress contained a declaration that intervention between the Colonies and Spain would be regarded as manifesting an unfriendly disposition to the United States. But although the Holy Alliance may be thus said to have propagated its principles for but a short period, the five Great Powers which formed themselves into the "Concert of Europe" have since exercised a superintending control over European, and especially Turkish affairs. Thus, in 1831 Belgium was under their ægis and constituted an independent and perpetually neutral State, the Black Sea was neutralised, a sixth Power [Italy], admitted to the ranks of the Great Powers, while Turkey was given participation in the Public Law and System of Europe. To sum up this part of the subject: So far as the superintending authority of the six Great Powers is recognised by the smaller States of Europe—and it would appear to have been acquiesced in by them in many instances—to that extent the fundamental principle of International Law, embodying the independence of sovereign states, appears to have been trenched upon, and the theory dear to the older publicists, of the equality of sovereign states to have been infringed.

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#### **Pacific Blockade.**

With regard to the means this "cabinet of nations" has employed in cases in which it has become necessary to actively enforce its decisions. These have been that innovation of the present century, "pacific blockade." Of the numerous instances in which it has been put into operation, the two Powers most interested in the present measures afford several examples. In 1827, at the time

when Great Britain, France, and Russia intervened in the Greek revolution, there was a blockade by the fleets of those three Powers of Turkey, *i.e.*, of the coasts of Greece occupied by the Turkish army. In 1850 the Greek ports were blockaded by Great Britain, and in the last instance in 1886 there was a blockade of Greek ports by the Great Powers, excluding France. With regard to the validity of "pacific blockade" from the point of view of International Law, it is at once obvious that its name is, to say the least, unfortunate. Blockade, which is stated to have been introduced by the Dutch towards the close of the sixteenth century, is a maritime warlike operation. Inasmuch as it cuts off neutral trade it is an important concession on the part of neutrals to the rights of belligerent States. The Power enforcing a blockade is admittedly a Power at war with the State to whose ports or coasts the blockade is applied, while "pacific blockade" is applied as a measure, in theory, falling short of war as regards the blockaded State; nevertheless, as Lord Palmerston asserted in the case of the "pacific blockade" of the *La Plata* in 1845-1848, practically amounting to war, but is war undeclared and which other States are not bound notice as such, nor in case of its infringement to submit to attempted confiscation of their ships, the usual penalty for breach of blockade, by the Powers who are putting it in force. In adding operations on land to those by sea, the late "pacific blockade" appears to introduce a novel method of coercion.

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#### The Objections.

Thus there are serious objections from the standpoint of International Law, both to the agency which was attempting so lately to coerce Greece as well as to the means by which the coercion was being effected. While praising the six Powers for their "mission of peace" this

ought not to be left out of sight. That Greece or Turkey could with success forcibly oppose the agents who were putting the means into force was of course impossible; that other strong Powers, *e.g.*, the United States or Japan, should have cause to raise practical objection to the means they employed is improbable.

W. P. PAIN.

## Books Received.

*Encyclopædia of the Laws of England.* Under the General Editorship of A. Wood Renton, M.A., LL.B. Vol. 1. Sweet & Maxwell, Ltd., London; and William Green & Sons, Edinburgh, 1897. Price £1.

*Domesday Book and Beyond.* By Frederic William Maitland, LL.D. University Press, Cambridge, 1897. Price 15s.

*The Publications of the Selden Society.* Select Cases in Chancery, A.D. 1364 to 1471. Bernard Quaritch, London, 1896.

*The Yearly Abridgement of Reports.* By Arthur Turnour Murray. Butterworth & Co., London, 1897. Price 15s.

*Bullen and Leake's Precedents of Pleadings.* Fifth Edition. By Thomas J. Bullen, Cyril Dodd, Q.C., and Charles Walter Clifford. Stevens & Sons, Ltd., London, 1897. Price 38s.

*The English Constitution.* By Jesse Macy, M.A. Macmillan & Co., New York and London, 1897. Price 8s. 6d.

*The Theory of International Trade.* Second Edition. By C. F. Bastable, M.A., LL.D. Macmillan & Co., London and New York, 1897. Price 3s. 6d.

*Law of Guarantees, and of Principal and Surety.* Third Edition. By Henry Anselmi de Colyar. Butterworth and Co., London, 1897. Price 17s. 6d.

*The Law of Slander and Libel.* Fifth Edition. By Henry Coleman Folkard. William Clowes & Sons, Ltd., London, 1897. Price £2 2s.

*Grant's Law of Banking.* Fifth Edition. By Claude C. M. Plumptre and J. K. Mackay. Butterworth & Co., London, 1897. Price £1 9s. 6d.

*Seaborne's Law of Vendors and Purchasers of Real Property.* Fourth Edition. By W. A. Jolly. Butterworth & Co., London, 1897. Price 10s. 6d.

*A New System of Book-Keeping for Solicitors.* By Sydney Hodsoll. Gee and Co., London, 1897. Price 3s. 6d.

*The Indian Evidence Act.* By Sir William Markby. Henry Frowde, London, 1897. Price 3s. 6d.

*Introduction to the Study of the Law of the Constitution.* Fifth Edition. By A. V. Dicey, Q.C., B.C.L. Macmillan & Co., Ltd., London, 1896. Price 12s. 6d.

*Il Tabellionato o Notariato.* By Edoardo Durando. Fratelli Bocca, Turin, 1897.

*Contributo a Favore dei Giurati.* By Umberto de Bonis. Tipografia Elzeviriana, Rome, 1896.

*La Teorica del Danno Criminale.* By Umberto de Bonis. Tipografia Elzeviriana, Rome, 1896.

*Il Risarcimento del Danno Economico e la Pena.* By Umberto de Bonis. Rome, 1897.

*American Digest*, 119 and 120. West Publishing Company, St. Paul, Minn., 1897.

## Reviews.

*Confederation Law of Canada; Privy Council Cases on the British North America Act, 1867; and the Practice on Special Leave to Appeal.* By GERALD JOHN WHEELER, M.A., LL.B., of Lincoln's Inn, Barrister-at-Law. London: Eyre and Spottiswoode, 1896.

The writer has endeavoured to collect in this volume, of over 1,000 pages, all the data of importance with regard to the various steps taken by the Imperial Government, as well as by the Legislatures of the Dominion and Provinces of Canada, towards confederation of those Provinces. To this he has wisely added, as fully as possible, the decisions of the Judicial Committee of the Privy Council bearing on the question. Under each section of the British North America Act, 1867, notes are given of all the leading appeals and petitions. Moreover, the Copyright Acts have been grouped together, and the American Copyright Act as amended in accordance with the Berne Convention, is included.

The leading appeal which touches on the vexed liquor question, was decided by the Privy Council last year, and has at last drawn a dividing line between the respective powers of the Dominion and the Provincial Legislatures. The value of this book is immense, comprising as it does, in a small compass, a most necessary erudition on laws and practice, which have hitherto been *rudis indigestaque moles*.

*Domesday Book and Beyond. Three Essays in the Early History of England.* By FREDERIC WILLIAM MAITLAND, LL.D., Downing Professor of the Laws of England, in the University of

Cambridge, of Lincoln's Inn, Barrister-at-Law. Cambridge : at the University Press. 1897.

To those who desire to penetrate the deeper waters of our early history, the publication of this book will prove invaluable. Domesday Book must be mastered to understand our English History. When the Conqueror charged his barons, legates, and justices to collect a *descriptio* of his new realm, various documents were compiled for that purpose; of which we have two manuscript volumes, known as the Domesday Book. Little Domesday, as the second of these volumes is sometimes called, deals with Essex, Norfolk, and Suffolk; the first volume relates to the rest of England. We also have the *Inquisitio Comitatus Cantabrigiæ*, the *Inquisitio Eliensis*, the Exon Domesday, an account of Cornwall and Devonshire, and of part of Somerset, Dorset, and Wiltshire, and the Exchequer Domesday. The Domesday Book is not a treatise on law, although it contains mention of some provincial privileges, nor is it a register of title; but it is a Geld-book. Professor Maitland elaborates many obscure questions concerning Book-land and the Land-book, Sake and Soke, Boroughs, Manor and Vill, and the Village community, to say nothing of Domesday statistics. Excellent is the compilation, and of immeasurable value to students of archæology.

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*Encyclopædia of the Laws of England, being a new Abridgment by the most eminent Legal Authorities.* Under the general editorship of A. WOOD RENTON, M.A., LL.B., of Gray's Inn, and of the Oxford Circuit, Barrister-at-Law. Vol. I. London: Sweet and Maxwell, Limited. Edinburgh: William Green and Sons. 1897.

This, the first volume, commences with Abandonment and ends in Bankruptcy. Not a happy omen certainly. The scheme, however, is a well considered one, and the publishers have acted wisely in securing the services of Mr. A. Wood Renton for their editor, a gentleman who has already had experience in literary supervision, being for some time editor of our contemporary, *The Law Journal*. The articles as a rule are not too lengthy, and thereby are the more serviceable. They are with some exceptions succinct enunciations of the law and trustworthy. The articles by Mr. W. F. Craies are especially good, although we notice from the title of his

second article, that he has been forced to deal with some unsavoury subjects. Sir Walter Phillimore has written an article on Affreightment, interesting in its character, but rather too verbose; the same may be said of an article on Absolute Privilege by Mr. W. Blake Odgers, Q.C., which is remarkable so far as the preliminary text is concerned for its omission of all the earlier authorities upon which it is founded, and for a rather full *verbatim* adoption of an extract from the judgment of Lopes, L.J., in a modern case decided in 1892 (*The Royal Aquarium v. Parkinson*), which, however, was not one of *absolute* privilege, but of *qualified* privilege, depending on the absence of malice. Further, we regret to notice that in his reference to Parliamentary proceedings, he puts forward, after a quotation from the Bill of Rights, as his leading authority, a case decided in 1887 in the Irish Courts (*Dillon v. Balfour*); whereas, privilege is founded on the Statute 4 Henry VIII., c. 8, reference to which is entirely omitted, as also the leading cases on the subject, viz.:—*R. v. Lord Abingdon* and *R. v. Creevy*. Mr. Barclay has written on Ambassador and Alliance in a fairly creditable manner; and the other writers have done their part as a rule well. The work should commend itself to the profession as a useful epitome of the Law of England, up to date, and for ready reference. Perhaps the most unfortunate step taken by the publishers was in asking Sir F. Pollock, Bart., to write what he terms a "General Introduction" to this volume. Such an introduction was unneeded, for "good wine needs no bush." The so-called General Introduction is not calculated to bring additional credit on the work, and it would have been better to have omitted it.

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*Select Cases in Chancery.* A.D. 1364 to 1471. Edited for the Selden Society by WILLIAM PALEY BAILDON. London: Bernard Quaritch. 1896.

The first part of this volume contains a selection of early Chancery petitions, while the second part deals with selected petitions, French petitions of various dates, or undated, and English petitions of various dates. The Petition or Bill varies little from those known in the Courts of Chancery before the Judicature Act, 1873. They are almost invariably in French until the reign of Henry V., when English forms became



customary. As a rule, each Bill is addressed to the Chancellor or Keeper by name, or by the name of his See, if he be a Bishop. The remedy asked for is frequently in very general terms; sometimes the plaintiff does not know what remedy to ask for, but leaves it to the Chancellor's superior wisdom and good graces. A not uncommon reason is that the power of the Common Law is not sufficient. Case 129 is very interesting; one Provost was condemned to pay Lowaryn a sum, for certain wine, by the (Foreign) Admiralty Court in the town of Bordeaux, by certain instruments executed in that town, and then being in the (English) Admirals' Court. Provost had delayed the execution of the judgment by pleading a protection from the king. Lowaryn prays that this protection may be disallowed, and that he may have a writ directed to the Lord Admiral of England and to his lieutenants to go on with the plea, notwithstanding the said protection which he alleges has been purchased by fraud. The instance of a foreign judgment being executed in this country, by our Court of Admiralty is well illustrated and explained in *Jurado v. Gregory* (1 Vent. 32), referred to in the November number (1896) of this Magazine, at p. 27. Our thanks are due to Mr. W. P. Baildon for his exhaustive and erudite compilation.

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*The Indian Evidence Act, with Notes.* By SIR WILLIAM MARKBY, K.C.I.E., late a Judge of the High Court of Judicature at Calcutta. London: Henry Frowde. 1897.

This books contains the Indian Evidence Act, 1872, as modified up to the 1st May, 1891, and the Editor has annotated the Act for the use of students preparing for their examination. He acknowledges his use of Field's *Law of Evidence in India*, of Stokes' *Anglo-Indian Codes*, and of Thayer's *Select Cases on Evidence*. We think that some of his remarks require qualification. Thus concerning sect. 6 of the Act, he says, "*A* is accused of the murder of *B*, by beating him. Whatever was said or done by *A* or *B*, or the by-standers at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact." But he quite omits to tell us that the proposition is very arguable, and in the case of *R. v. Bedingfield* (1879), although the late Mr. Pitt Taylor maintained it, it was sternly denied by the late Lord Chief Justice, Sir Alexander Cockburn.

*The Yearly Abridgment of Reports, being a full Analysis of all Cases Decided in the Superior Courts, during the legal year 1895-6.* By ARTHUR TURNOUR MURRAY, B.A., of Lincoln's Inn, Barrister-at-Law. London: Butterworth and Co. 1897.

This is not a mere compilation of existing head-notes, but consists of an analysis of every reported case contained in *The Law Reports, The Justice of the Peace, The Law Journal Reports, The Law Times Reports, The Weekly Reporter, The Times Law Reports, Aspinall's Maritime Law Cases, Commercial Cases, Cox's Criminal Law Cases, Manson's Bankruptcy and Winding-up of Companies Reports, Reports of Patent Cases, and Smith's Registration Cases*. A new feature of this compilation consists of a Subject Index, arranged alphabetically on the same plan as an index to a text-book. In these days of work at extremely high pressure, the value of such a book is obvious. It is the best compilation of the kind that we know of.

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*Grant's Treatise on the Law Relating to Bankers and Banking Companies.* Edited by CLAUDE C. M. PLUMPTRE, of the Middle Temple, Barrister-at-Law, assisted by J. K. MACKAY, of the Middle Temple, Barrister-at-Law. Fifth Edition. London: Butterworth and Co. 1897.

It is fifteen years ago since the last edition of this work was published, and many are the changes which have occurred in the law since that time, both through decided Cases and through various Acts of Parliament. Among others, the Bills of Exchange Act, 1882; The Bankers' Books Evidence Act; The Conversion of India Stock Act, 1887; The Companies (Memorandum of Association) Act, 1890; The Companies (Winding-up) Act, 1890; The Directors Liability Act, 1890; The Stamp Act, 1891; and The Forged Transfers Act, 1891. Moreover, the famous case of *Bank of England v. Vagliano* [1891] A.C. 107, has proved a disturbing element to bankers since the last edition of this work. The Editors have done their work well, bringing the book quite up to date, and rendering it a serviceable manual for bankers and their legal advisers.

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*Seaborne's Concise Manual of the Law Relating to Vendors and Purchasers of Real Property.* Edited by W. ARNOLD JOLLY,

M.A., of Lincoln's Inn, Barrister-at-Law. Fourth Edition. London: Butterworth and Co. 1897.

*Seaborne's Vendors and Purchasers* was first published in 1871, and has now attained a fourth edition. It is a work better suited for the use of solicitors than for conveyancers, being rather an abstract of the law on the above subject than an exhaustive treatise. The editor has thoroughly revised the work, and preserved its known character of a useful and trustworthy manual.

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*A New System of Book-keeping for Solicitors.* By SYDNEY HODSOLL, Chartered Accountant. London: Gee and Co. 1897.

The object of this work is to enable solicitors to keep their accounts accurately, and to be able to show at any time the amount of cash in hand and at bank, how much of such cash belongs to *clients*, and how much to the business, the amounts owing to, and by, clients *individually*, and the amount of business done, and the resulting profit or loss. The writer appears to have successfully attained his object.

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*Introduction to the Study of the Law of the Constitution.* By A. V. DICEY, Q.C., B.C.L., of the Inner Temple; Vinerian Professor of English Law, Fellow of All Souls' College, Oxford, and Hon. LL.D. Glasgow and Edinburgh. Fifth Edition. London: Macmillan and Co., Ltd. 1897.

The Author tells us that the only new matter in this edition deserving of notice are two Notes, one on the Duty of Soldiers when called upon to disperse an unlawful assembly, and the other on Swiss Federation. The former is culled from a Commission (of which the late Lord Bowen was a member) appointed to report on the conduct of the troops at Ackton Colliery in 1893. The other is derived from Mr. A. L. Lowell's *Governments and Parties in Continental Europe*. With regard to the rest of the book, there is little to add to the eulogium with which it has in former days been received in these pages. We regret, however, that Professor Dicey has not seen his way to demonstrate with his usual authority and in a stronger manner, the error which has crept into the English law in more recent years with regard to the expulsion of foreign criminals from a State. He says (p. 215) "neither the Crown, nor any servant of the Crown,

has any right to expel a foreign criminal from the country, or to surrender him to his own Government for trial." He here states the error ; and he contents himself with mentioning some Cases of the greatest moment in a foot-note, where the true law of England, as distinguished from the modern judge-made error, is laid down. Has Professor Dicey ever heard of the *Droit de Renvoi* ? This right is possessed by all States, and by virtue of which all foreigners may be expelled the kingdom. To this very day it is frequently put in force by the Courts of Jersey, notably in cases where French persons, convicted of small offences, are returned to France without other punishment. It is common knowledge, that all civilized States should be assisting each other in carrying out their respective civil decrees and criminal sentences. This we showed at length in the last November number of this Magazine (p. 24), in an article headed *The Dynamite Plot and Extradition*.

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*The Law of Slander and Libel, founded upon the Treatise of the late Thomas Starkie, Esq., Q.C., including the Procedure, Pleading and Evidence, Civil and Criminal, with Forms and Precedents ; also Contempts of Court, Criminal Informations, etc., and an Appendix of Statutes.* Sixth Edition. By HENRY COLEMAN FOLKARD, of Lincoln's Inn and the Western Circuit, Barrister-at-Law, Recorder of Bath. London : William Clowes & Sons, Limited. 1897.

We are pleased to hail the sixth edition of this important work. It is upwards of seventy-five years since the late Mr. Starkie wrote the first edition, of which, however, but a very small portion now remains. Forming as it did the basis upon which this, as well as the several preceding editions of the work have been constructed, it has, bit by bit, been cancelled to make way for newer matter supplied by the present learned Editor. At the time when Mr. Starkie wrote, only two statutes relating to the subject existed. Since then the legislature has been pleased to formulate statute upon statute extending or modifying the then law of slander and libel, to which must be added the numberless Reported Cases on those subjects, as well as notes of several cases relating to seditious libels, and libels on the Government and ministers of the day, no trace of which can be found in any of the Reports, but which have been obtained by the arduous research of the Editor among the Crown Office

Records at the Rolls Office. The law of defamation is a study of itself. What is slander? and when is it actionable? Again, what are the niceties of the law when slander affects a person in his professional business? Again, the intricacies of slander of title, the question of absolute privilege, restrictions on free discussion, criticism on works of art or literary publications—all these are matters of the highest importance to the legal practitioner, as well as to the public at large. Mr. Folkard has dealt with all these matters in an exhaustive and lucid manner. He further supplies us with deep learning on pleadings in actions for defamation, as well as with copious information on that momentous branch of law—Criminal Information for libel.

A patient investigation of the volume has not disclosed to us any omissions, nor do we find a single mistake in the law as laid down therein. We deem it to be a work of the greatest value, and the *one* book of authority on the subject, beside which all cognate publications are cast into the shade. No lawyer's library can be said to be complete without it.

*A Treatise on the Law of Guarantees and of Principal and Surety.* By HENRY ANSELM DE COLYAR, of the Middle Temple, Barrister-at-Law. Third Edition. London: Butterworth and Co. 1897.

This erudite work is so well known to the profession, that it is hardly necessary for us to pass any lengthy comment on it. Written by Mr. de Colyar, at a time when the principles of the Law of Guarantees were but ill-digested and chaotic, the work, unpretending as it is, has made for itself a name, which must ever shed an unfading lustre on its Author. Our American cousins have shown their admiration of it by reprinting it, whether with or without the consent of its Author we are unaware. In the edition before us, Mr. de Colyar has fully maintained the standard of his work. He has brought it up to date, adding all the more important decisions on the subject which have been made since his last edition; the statute law also. The book continues to hold its own as a valuable exponent of this branch of law.

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*Bullen and Leake's Precedents of Pleadings, with Notes and Rules relating to Pleading.* Fifth Edition. By THOMAS J. BULLEN, of the Inner Temple, Barrister-at-Law, CYRIL DODD, of the Inner Temple,

Q.C., and CHARLES WALTER CLIFFORD, of the Inner Temple, Barrister-at-Law. London: Stevens and Sons, Ltd. 1897.

The intention of the framers of the Judicature Act, 1873, was to establish a uniform system of pleading, to take the place of the very various methods of pleading thitherto in use in the several Superior Courts. The new body of Rules then promulgated, in addition to the general prohibition against pleading evidence, contained many Rules directed to check prolixity, and bring the parties to a point. Probably the most important of these, were those which established that each party should be taken to admit what he did not deny, and which prohibited mere general denials in the first instance, until each party had first dealt with the subject matter in detail. The old and trusted friend of all good pleaders, viz., Bullen and Leake, was by the operation of the above Rules completely thrown out of gear, and able to shed but very insufficient light on the new practice. It was a distinct boon to the Profession when the present Editors determined to publish a new edition of their valuable work, but good as that edition was, time, and especially the new practice was requisite to enable them to produce a work of the same authority and learning, as that which had preceded the passing of the Judicature Acts. But time passes away, decisions on the Acts and Orders and Rules are made, the crude procedure is elaborated, and after a period of nearly a quarter of a century, the Editors are able to give their *imprimatur* to a book which in no degree falls short of the first production of the illustrious Authors of the earlier work. The precedents given as examples by the Rules of the Supreme Court, 1883, now in force, are more concise than those in the Schedule of the Judicature Act, 1875, and less rigid; therefore the precedents in this Edition are in form somewhat more in accordance with those of earlier editions, than the precedents of the last edition were. It is impossible to exceed the measure of praise which we bestow on this Edition; it is terse and to the point. Many pages, and far more space than we can bestow are necessary to analyse this edition completely. The reader therefore must take it from us, that the Editors have in every way preserved the high standard of the work, and brought it down to date effectively and conscientiously. It is, under the present régime, bound to hold its own as the book on Pleadings, and the Profession will accept it as such.

*The English Constitution, a Commentary on its Nature and Growth.* By JESSE MACY, M.A., Professor of Political Science in Iowa College. London: Macmillan & Co., Limited. 1897.

The writer gives us his views on the nature of our Constitution, and of its growth to the present day, dealing with Magna Charta, the Petition of Right 1628, the Habeas Corpus Act 1679, the Bill of Rights 1689, and the Act of Settlement 1700. The work is primarily intended for the American reader, who is not satisfied with knowing what a Constitution is, but also wishes to know how it was made. The work is easy reading, and useful to beginners who are not yet capable of investigating the heavier pages of Professor Dicey.

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*The Theory of International Trade with some of its Applications to Economic Policy.* Second Edition. By C. F. BASTABLE, M.A., LL.D., Professor of Political Economy in the University of Dublin. London: Macmillan & Co., Limited. 1897.

This book is specially intended for serious students of economic theories, and the principles of the subjects are considered as free as possible from unnecessary details. It is about ten years since the first edition of this work saw light, and for those who are desirous of becoming learners of this interesting subject we are unacquainted with any better elementary book.

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*Il Tabellionato o Notariato.* By EDGARDO DURANDO. (Turin, 1897.)

In this book the whole history of the notariate is traced from the Roman Republic through mediæval Italian and later Piedmontese law down to modern days. The office of notary has been at all times more important in Continental systems than in England, and the English reader is amazed at the amount of monographs on the subject cited by Signor Durando. In England we have not much to show, except Brooke's treatise. The notary, though apparently not of ecclesiastical origin, soon became more or less ecclesiastical in his appointment and functions. In England he is still nominated by the Archbishop of Canterbury, though his duties are now mainly commercial, and almost confined in practice to the notarial protest of foreign bills of exchange. In Signor

Durando's learned and complete work there are two tables of diagrams of various notarial signs used in Italy, and it is interesting to find that in all the signs later than the year 1200 the sign of the cross—more or less disguised—appears. This seems to point to the fact that it must have been about that date when the notary became an ecclesiastical rather than a lay official, and attained the prominent position which he occupied in Canon law. In that system it was a maxim that the evidence of a notary was worth that of two ordinary witnesses. His gradual rise from the position of a slave in the earlier Roman law to that of a trusted public official is fully described in the work under notice. His duties—originally humble—developed into the *ars notaria*, and Rolandini Rodulphini published a *Summa Totius Artis Notariæ* (Venice, 1546). Italy in the thirteenth and fourteenth centuries produced several notaries whose names are known to every student of history and literature. Among others, were the fathers of Dante (possibly) and of Petrarca respectively, Brunetto Latini the master of Dante, Pier delle Vigne the Chancellor of Frederic II., and Cola di Rienzi.

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*The Harvard Law Review.* (Cambridge, Mass., January and February, 1897.)

In these numbers the articles most interesting to English lawyers will be one on "Unfair Competition," beginning with the case of *Knott v. Morgan*, 2 Keen, 213 (1836), and another on "The Judicial Characteristics of the late Lord Bowen."

*American Law Review.* (St. Louis, January-February, 1897.)

There are interesting articles on Bracton, Coke, and Bacon, and a by no means enthusiastic estimate of "The Law as a Profession for Young Men."

*The University Law Review.* (New York, February, 1897.)

This review is extremely technical, and most of the articles deal with points of American law.

*Canada Law Journal.* (Toronto, February, 1897.)

This is chiefly a collection of reports, among which English decisions are well represented, though perhaps some of them are a little belated.



*Journal du Droit International Privé et de la Jurisprudence Comparée*, Nos. XI.-XII. (Paris, 1896.)

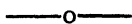
The number opens with an interesting sketch of the English law of intestate succession, by M. Stocquart, of Brussels. Later on there is a discussion of the case of Sun-Yat-Sen and the rights of legations. The writer agrees with the view taken by Professor Holland in a letter to the *Times* of the 24th October, 1896, that though every man's house is his castle, it is not his prison, even in the case of an ambassador. A curious case noticed is that of the process in Italy against Prince Barberini Colonna di Sciarra for an offence impossible in England, viz., selling to a foreigner part of his collection of pictures and sculpture. The family had held through successive generations the collection bequeathed to it by Urban VIII. in 1628. In the end judgment was given against the Prince by the Court of Appeal of Ancona, not without some difficulties as to the interpretation of the law.

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Among periodicals we notice: *The Chicago Legal News*; *The Law Book News*, of St. Paul, Minn.; *The National Corporation Reporter*, of Chicago; *The American Law Register and Review*; *The Canadian Law Times*; *The Western Law Times*, of Canada; *The Madras Law Journal*; *The Law Times*, London; *The Law Journal*, London; *Bulletin Mensuel de la Société de Législation Comparée*; *Annuaire de Législation Française*; *Annuaire de Législation Etrangère*, Paris; *La Revue Générale*; *Revue Bibliographique Belge*; *Case and Comment*, Rochester, N.Y.

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# THE LAW MAGAZINE AND REVIEW.

No. CCCV.—AUGUST, 1897.

## Obiter Dicta.

HER MAJESTY'S Diamond Jubilee, to celebrate the sixtieth year of Her glorious reign, was kept on the 22nd day of June. The Inns of Court celebrated the event in various ways. Lincoln's Inn gave a Dinner to the Colonial Premiers on the 5th July; the Inner Temple entertained about 2,000 children at a Garden Party on the 8th July; Gray's Inn did the same on 26th June, besides giving a grand Ball on the 25th June. The Middle Temple probably excelled the three other Inns, by giving a Banquet on the 6th July, a Ball on the 9th July, and a Garden Party to distinguished guests on the 13th July.

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The Council of the Incorporated Law Society gave a Jubilee Ball on the 30th June in their Hall in Chancery Lane.

In the case of *Bendall v. Lofthouse*, tried at the Skipton County Court, Mr. Bompas, Q.C., seems to have negatived the elementary proposition that a solicitor has a lien on papers which he deals with as such. But on appeal to the Divisional Court, Mr. Justice Cave explained that "the plaintiff (a solicitor) has a lien, for preparing the deeds, on the parchment, and writing of the re-conveyance and conveyance," while Mr. Justice Ridley remarked: "I have considerable difficulty in following either of the County Court Judge's reasons why there should be no lien."

A Lawyer's "Farewell" to Themis on leaving Town  
for the Long Vacation :—

Themis thou Goddess most divine  
Thou fairest of th' Olympic line,  
To thee "Farewell"!—The time must be,  
When from this sultry Town I flee;  
For Sirius reigns. And who can dare  
His scorching influence to bear?  
From Town I flee, in hopes to find  
Repose for body, rest for mind;  
I go to seek umbrageous shade,  
Where flow'rets bloom, and never fade,  
Within that grove, so calm and fair,  
Where Nymphs and Satyrs all repair,  
'Mid Phœbe's glances, from on high,  
Partaking of divinity!  
I leave the Bar, the Courts, the Gown,  
Forensic glitter, and renown:  
I leave the Common Law in peace,  
I wail the Statute book's increase.  
Themis "Farewell"! For I must go  
While Long Vacation doth allow,  
While those Three Sisters will permit  
From chambers stern a bright exit.  
"Farewell"! "Farewell"! it smites my heart  
To think how shortly we must part,  
And cease to burn the midnight oil  
In deep research or legal toil.  
But yet "Farewell"; I go away  
To seek repose without delay,  
To breathe the balmy air, until  
Arrives November, gaunt and chill,  
When back again will I return  
For Themis' words once more to burn,  
Again to eat the Temple fare,  
Again the work and toil to share,  
Again, with deepest joy to find  
The Goddess fair I left behind!  
More can I say! such joys in store  
To meet thee, Themis, then once more!

B.





THE WILKES CUP.

# I.—JOHN WILKES AND THE LIBERTY OF THE PRESS.

## THE WILKES CUP.

IN the year 1772, on the 24th of January, the Court of Common Council of the City of London voted a Silver Cup\* to the celebrated patriot John Wilkes for his defence of the freedom of the Press, and left the design to his own direction. The death of Cæsar in the Roman Senate House was the subject of his choice, being, he said, one of the greatest sacrifices to public liberty recorded in history. The dagger being in the first quarter of the City Arms, furnished the hint of

“The *dagger* went to pierce the tyrant’s breast.”

—POPE.

Julius Cæsar is represented on the Cup as he is described by historians at that important moment, *i.e.*, gracefully covering himself with his toga and falling at the base of the pedestal which supports the statue of Pompey. Brutus, Cassius, and other Romans who conspired on behalf of their country, form a circle around the body of Cæsar. Every eye is fixed on Brutus, who is in the attitude of congratulating Cicero on the recovery of the public liberty, and pointing to the prostrate and expiring man. At the bottom of the Cup is the following inscription, encircled with myrtle and oak leaves:—

“ . . . . May every tyrant feel

The keen deep searchings of a patriot’s steel ? ”

—CHURCHILL.

On the reverse of the Cup is the inscription: “The gift of the City of London to Alderman Wilkes 1772.”

\* Drawn by my daughter Miss Henrietta Sherston Baker, from the original now in my possession. Miss Mary Wilkes (second sister of the above John Wilkes, married to George Hayley, Alderman and M.P. for the City of London) being my ancestress.



The facts which occasioned the presentation of this Cup are very interesting, and were as follows: On the meeting of Parliament in 1769, some occasional sketches of the proceedings of the House of Commons were printed in the *London Evening Post*; other newspapers in a short time followed the example. On the 12th of February, 1771, Colonel George Onslow, at the instigation of the Cabinet, complained that six printers of newspapers had printed Parliamentary debates and proceedings. All these persons were ordered to attend the House. Some obeyed the summons, but Miller, the printer of the *London Evening Post*, did not comply with the order. Colonel Onslow having previously declared that he intended to bring before the House every printer who had printed any of the debates or proceedings of Parliament, in order that they might receive the punishment of their contumacy, it was concerted between Wilkes and Mr. Almon, the proprietor of the *London Evening Post*, that if Miller, the printer of that journal, should be sought for, a serious, a bold, and a strong resistance should be made. The plan was this: The printer should pay no regard to the order to attend the House of Commons, but if the House, sent a messenger to apprehend him, Miller was to have a City constable in readiness to take the messenger into custody, that then they were to proceed to the Mansion House, where Mr. Alderman Wilkes, the Lord Mayor (Brass Crosby), and Mr. Alderman Oliver would attend as Magistrates. Circumstances happened exactly as had been foreseen. The printer having neglected to attend to the order of the House of Commons, on the 15th March, a messenger of the House came to take him into custody. The printer thereupon gave the messenger in charge to the city constable for an assault, and they all proceeded to the Mansion House. The messenger attempted to justify the arrest of the printer by virtue of the Speaker's warrant, but on it being shewn that

the messenger was not a peace officer and moreover that the warrant was not backed by a City magistrate, the court, after hearing the case, discharged the printer from the custody of the messenger. The printer in his turn now charged the messenger with a breach of the peace, and was thereupon bound over to prosecute the messenger, who was desired to find bail for his offence. This the messenger refused to do; he was therefore committed to prison (Wood Street counter). By this time the deputy serjeant-at-arms arrived from the House and gave the required bail for the prisoner. The Ministry and their party in the House of Commons were enraged at this violent resistance to their power. The Lord Mayor and Mr. Alderman Oliver were ordered to attend the House. The Clerk to the Lord Mayor was also ordered to attend with the book containing the entry of the bail found by the messenger. The Lord Mayor and Mr. Alderman Oliver were committed to the Tower, where they were visited by all the Lords and members of the House of Commons, who were in opposition to the Ministry, as well as by great numbers of private gentlemen. They also received addresses containing expressions of the highest approbation and of the warmest thanks from every Ward in the City of London. The Clerk to the Lord Mayor duly attended the House and was ordered to immediately expunge the entry from his book. Wilkes was left alone, for the House feared to arrest him; they had, however, recourse to a prudent subterfuge. They ordered him to attend on the 8th of April, and then moved the adjournment for the Easter Vacation until the 9th. The Lord Mayor and Mr. Alderman Oliver were liberated on the 8th of May, the day of the prorogation of Parliament. The City was illuminated in their honour, and every mark of rejoicing was displayed. The Corporation of the City of London presented each of the above magistrates with a silver cup, in commemoration of their

valuable services in defence of the freedom of the Press. The design of the cup which was presented to Mr. Alderman Wilkes, by order of the Common Council, was as above mentioned.

The struggle between Parliament and the Press concerning the printing of debates was not repeated. Parliament seems to have acknowledged that constituents have a right to know the Parliamentary proceedings of their representatives. From that time to the present the Debates in both Houses have been constantly printed in all newspapers, and Parliament, as well as the public, has profited by the facility given to the Press, and obtained by the City of London in the manner above explained.

THE EDITOR.

## II.—FIXITY OF TENURE IN INDIA.

THE articles entitled "Indian Affairs" which occasionally appear in the *Times* are believed to emanate from the India Office and to represent the views of the Indian Secretary of State; and when they conflict with the public utterances of that officer, they create a degree of perplexity as to the actual views of the Government, which cannot fail to weaken public confidence in its intentions. On the 26th January last Lord G. Hamilton, in opposing Sir W. Wedderburn's motion for an inquiry into the causes by reason of which the masses in India are helpless to resist even the first attacks of famine, said :—

"The honourable baronet seems to indicate that if such an inquiry were made, it would be possible to stop famine in India. I contest that altogether. Famines are inevitable incidents. It is a mistake and is wrong to hold out the hope that remedies can be suggested, which can prevent famines desolating India."

On the 27th April following, an article on "Indian Affairs" appeared in the *Times*, maintaining that "famines are not beyond human control, and questioning whether such control has been effectively exercised in India; asserting that the staying power of the people is a main factor in determining the extent to which a failure of crops shall mean wholesale starvation; that that power is the product of the well-being of the people in ordinary times; that its force depends on the permanent prosperity of the community, and that fixity of tenure—which the Government systematically opposes by periodical enhancements of the land tax—holds the first place among the conditions which make for the permanent prosperity of agricultural races."

A flat denial is thus given to the Secretary of State's dictum that famines are inevitable, and that it is wrong to seek the means of stopping them. The *Times* article, moreover, ascribes the severity of famines in India to the very action of the Government in preventing, by oppressive taxation, the agricultural classes from attaining the degree of prosperity which would enable them to tide over a season of dearth. The article further informs its readers that the Government in 1804 promised a Permanent Settlement in Orissa upon certain conditions which have been fulfilled, and within a certain period, which has long elapsed, and that the Government evaded redeeming its pledge "through loopholes in the fluctuating policy of the last ninety-three years." Thereupon the article calls on the Government to fulfil its promise now, and seems to have been dictated by a sense of justice and sound policy, except in its last paragraph, which reads as if it were the work of an entirely different author. It says: "It is of course not a question of a Permanent Settlement, such as Lord Cornwallis gave to Bengal, which secured definite rights to the landowners and left the rights of the cultivators undefined."

This description of Lord Cornwallis's Settlement is simply a misrepresentation, as any one may ascertain, who

will glance at the Regulations of January, 1793, which embody that Settlement. The land tax at that time was most oppressive, amounting to ten-elevenths of the rent due to the owner, with the result that rents were proportionately enhanced, that one-third of the country was jungle, inhabited only by wild beasts, and that the State could scarcely realise its land revenue. The pledge which the Government then took to refrain from further enhancing the tax, induced the landowners to offer reasonable terms and even material assistance to all who would come and cultivate their fields. The success of the measure was marvellous, as innumerable official documents testify. Sir Ashley Eden, on being appointed Lieutenant-Governor of Bengal, said, on his return from his first tour of inspection:—"Great as the progress which I knew had been made in the position of the cultivating classes, I was quite unprepared to find them occupying a position so different from that which I remembered them to occupy when I first came to the country. They were poor and oppressed, with little incentive to increase the productive powers of the soil. I find them now as prosperous, as independent, and as comfortable as the peasantry, I believe, of any country in the world; well fed, well clothed, free to enjoy the full benefit of their labours and able to hold their own and obtain prompt redress for any wrong."

Now this great and rapid improvement in the position of the cultivators could not have taken place had they not been protected in the enjoyment of their rights. The Permanent Settlement Regulations, while they exempted the proprietors of land from future enhancements of the land-tax, established efficient Courts of Judicature for the protection of both landlords and tenants against illegal demands and all wrongs whatsoever; and the motive for misrepresenting and attempting to discredit Lord

Cornwallis's great measure arose from the bar which it raised against the exercise of arbitrary power by the Executive in India, and against the illegal modes of duress which were resorted to for the enforcement of illegal and oppressive demands. The Settlement was attacked early by officials whose conduct it tended to control and regulate, and Sir Philip Francis, the supposed author of the letters of Junius, who was then a member of the Indian Government, replying to an allegation that the Settlement neglected the rights and interests of the ryots, recorded a Minute, in which he said :—

“ It is proposed to secure to the ryots the perpetual and undisturbed possession of their lands. The language, I know, is popular and has often been used to give countenance and colour to acts of violence and injustice against zemindars and superior ranks of natives. Before we give perpetual possession, we ought to determine the property. The State does not consist of nothing but the ruler and the ryot, nor is it true that the ryot is the proprietor of the land ; but it does not follow that because the ryot has no direct permanent property in the land, he should therefore have no rights or that no care should be taken to protect him. Without his assistance the land is useless to the zemindar. If they are left to themselves, they will soon come to an agreement in which each party will find his advantage. To dictate the specific terms of any lease is an invasion of the rights of property. The intervention of the Government between the zemindar and the ryot should have no object but to enforce their respective engagements.”

If we now consider, in the light of Sir Philip Francis's observation, the last paragraph of the *Times* article vaguely advocating undefined rights on behalf of the cultivators, a revelation is disclosed, indicating that the Government, on pretence of fulfilling the promise of 93 years ago, is

preparing to despoil the zemindars of Orissa as they despoiled those of Bengal, by means of the Tenancy Act which a compliant and obedient Legislative Council passed in 1885. The provisions of that enactment created a class of middlemen delusively named "Occupancy ryots," who were endowed with the right of holding their lands at a permanently fixed rent, while they were authorised to rack rent their under-tenants, the cultivators. No surer scheme could have been devised for enabling these middlemen to secure the bulk of the profits from agriculture, which legitimately belong to the owners and cultivators of the land.

The aim of that complicated scheme will be more easily apprehended on a review of the course which the Authorities previously pursued in respect of the Permanent Settlement. When that compact enabled the zemindars, by the application of capital and labour, to develop the resources of their estates, to discharge the heavy tax permanently imposed on them, and later, to increase their incomes and the well-being of their tenants, the Government pledge to refrain from enhancing the land tax was represented by zealous fiscal officers as a wanton sacrifice of revenue. The suggestion to repudiate Lord Cornwallis's Permanent Settlement was entertained on the ground that it did not bind the present generation, and when that question came before the Secretary of State's Council in London, a member emphatically declared:—"We have no standing ground in India except brute force, if we forfeit our character for truth." At the same time many high Indian officials raised their voices against repudiation, with the result that open repudiation was abandoned and the scheme of the Tenancy Act, which offered the same financial advantage, while its violation of principle was obscured in its complicated machinery, was, after a few years of ingenious elaboration, duly enacted in

1885. A non-official member of the Legislature said on the occasion :—

“I yield to no one in my desire to see the ryots protected from oppression ; but it is my deliberate opinion that this Bill will not accomplish that object. On the contrary, I believe that the constant intervention of Revenue officers in the details of agricultural life will lead to the most widespread confusion, and will be as disastrous to the ryots as to the zemindars themselves. I view with the deepest concern the outlook before us. We are embarking rashly on a sea of change, and many will be shipwrecked on the voyage. Whatever be the result, I have at any rate the satisfaction of feeling that I have acted as the true friend of my country and the Government in warning you of the political dangers which, I believe, underlie the proposed legislation.”

Some two years before the measure was enacted, and while it was still under elaboration, a draft of its provisions with official notes was submitted for the opinion of the Chief Justice of Bengal, who indited an instructive Minute on the subject, containing the following statements :—

“I consider the last argument\* quite superfluous. I take it to be clear that any Government, in case of *real emergency*, has a right, so far as it is necessary, to interfere with vested rights, to whomsoever they may belong and howsoever they may have been created. But then I take it to be equally clear that, *without some such actual necessity*, no Government is justified in interfering with the vested interests of any class of its subjects, especially when those interests have been created and defined after due consideration by the State's own legislative enactments. The true question is, whether there does or does not exist any such necessity as justifies the Government in depriving the landlords of ~~their~~ rights and privileges in the manner proposed in the Bill. I see no such necessity, and I am bound to say that, amongst the many complaints on behalf of the ryots, which have been published by the Government in connection with this subject, I am unable to find a single statement that the ryots themselves desired anything of the kind. The deprivation to which I allude was never even suggested by the

\* That Government had reserved in the Permanent Settlement the power of interference.



ryots. It was proposed for the first time by certain officials, and is supported, not upon the ground of actual necessity, but because in the opinion of those gentlemen the ryots were, or ought to have been, in a better position some ninety years ago than they are now, and that it is desirable in the interests of the State to place them in that position.

“ I view with horror and dismay the provisions of the present Bill. It appears to me absolutely cruel to sacrifice wantonly and unnecessarily the rights of one section of the community for the supposed benefit of another; to violate laws and usages which have been sanctioned by the Courts and the Legislature for nearly a century, to unrip a solemn settlement of vexed questions made twenty-three years ago, and all this, not for the purpose of meeting any actual complaints or rectifying any proved abuses, but merely to place the ryots in a position which certain, I think, mistaken officials imagined they occupied in 1793. I must add that the ground (if it is worthy of being called by that name) upon which the authors of the Bill pretend to justify their interference with the rights of the zemindars, appears to me as transparent a pretext as ever was presented to the public.

“ I think that the Bengal public has a right to inquire upon what authority those views are founded, and how far they are consistent with the opinions of the many distinguished men who, as judges, statesmen, and legislators, have administered and explained the law during the last ninety years. And in answer to this inquiry the Public may be surprised to learn that, as to some of the proposed changes, they are based upon no authority at all; as to others, that the views of these gentlemen are founded upon their own construction of the Regulations of 1793 and the Act of 1859—entirely without regard to the construction which has been put upon those enactments by the Courts of Law and the Legislature; and as to all, that their views are not only inconsistent with the opinions and the policy of the last three generations, but with the laws and usages which have prevailed in Bengal since the time of the Permanent Settlement.

“ I have always been under the impression that the proper construction of a legislative enactment is, in this as in most other countries, a matter *prima facie* to be determined by the Courts of Law, and if the Courts of Law give a meaning to it, which the Legislature or the Government did not intend, it is

then the duty of the Government, with the assistance of the Legislature, to set them right by passing some amending measure. But when we find that the construction which the Law Courts put upon the Permanent Settlement was approved by the Legislature and the Government, it looks very much as if that construction was the one which the Government had originally intended. And, moreover, when the Legislature in the year 1859 accepted their interpretation of the law and framed the Act of that year in accordance with it, it seems to me that the weight of authority in favour of that interpretation is almost overwhelming, and the more so when we remember that in the year 1869, after the Government on the one hand, and the agricultural community on the other, had made trial for ten years of the working of the Act of 1859, another Act was passed which, instead of altering that law, confirmed it in all material respects.

“By the Acts of 1859 and 1869, the relations of landlord and tenant had been settled by the Government, and upon the faith of that settlement many thousands estates had been purchased by the zemindars and many lakhs of rupees expended upon those estates. These gentlemen were therefore surely justified in opposing any invasion of their rights as settled and confirmed by those Acts; and the onus would seem to lie upon those who would counsel such invasion, to shew that it was necessary and justifiable.”

The Minute further exposes the unprincipled character of several other provisions of the Bill; and, after shewing that, whilst its avowed object was to benefit the cultivators, it effectually deprived them of the protection they were receiving under existing laws, from being subjected to rack rents, the document closes with the following words:—“I hope and pray that the policy of confiscation—which has borne and is bearing still such terrible fruit in Ireland—may be averted, by the blessing of God, from our Indian possessions.”

During the years which have elapsed since that hope and that prayer were uttered, the Indian populations, subjected to the policy of confiscation involved in the Bengal Tenancy Act and to the system of arbitrary re-assessments

of the land tax, have been stripped of much of their substance and resources, chiefly for defraying unprovoked and unsuccessful wars carried on beyond the boundaries of their country ; and now they are overtaken by a famine of unprecedented extent, the attacks of which the masses, in their impoverished condition, are helpless to resist.

J. DACOSTA.

### III.—PROCEDURE IN POETRY.

IN an article in the February number of the *Law Magazine and Review* the present writer expressed his intention of attempting to elaborate in greater detail the subject which was then only hinted at in a note. The subject is an extensive one, and to be completely treated needs a knowledge of European literature greater than is at the disposal of most members of the Bar. For the present article, researches have been made in the literatures, ancient and modern, of the most important European languages. As might perhaps have been expected, there is little or nothing bearing on the question to be found in the literature of countries in which Chivalry and Roman law had little influence, and the Anglo-Saxon, modern Greek, Scandinavian, and Russian literatures have been drawn blank. Where instances do occur, the main difficulty has been to determine what to accept and what to reject amid so rich a mass of material. Anything dramatic has been excluded. The numerous "trial scenes" which occur in Shakespeare and in dramas like *Les Plaideurs* and the *Nise Lastimosa* of Bermudez are not dealt with. Excluded also are (1) records in verse of actual trials such as the "State Trials in Verse,"\*

\* By N. T. Moile (1842), more curious than interesting. The verse is of the flattest and most conventional type.

or Browning's "The Ring and the Book"; \* (2) episodes in longer poems, such as that in Iliad xviii., where one of the compartments of the shield of Achilles represented what was probably a normal trial of an action in pre-historic Hellas; (3) versifications of actual practice, such as epigrams in the Greek Anthology† and Martial,‡ the "Pleader's Guide," or Outram's "Process of Soumin, 'and Roumin'"; (4) actual legal documents, such as some of the pre-Conquest charters, which were sometimes cast into the form of popular rime; § (5) doggerel mnemonics, both in Latin and English.||

Again, no account will be taken of law-books in verse, such as the poetical paraphrases of the Institutes of Justinian by Grotius and others, and various works on Hindu and Mohammedan law, the Grágás Gridamál in Icelandic, &c., or of those poets who, like Horace,¶ Prudentius,\*\* Adam of St. Victor,†† as well as more modern

\* For readers who may not have ready access to this work, it may be stated that it is a very long and detailed description in blank verse of the trial of Count Guido Franceschini and his accomplices for murder. The trial took place at Rome in 1698. Benefit of clergy was pleaded, but in vain. The names of some curious legal officials of the period appear; *Dominus Hyacinthus de Archangelis* is *Pauperum Procurator*, *Juris Doctor Johannes Baptista Bottinius* is *Fisci et Rev. Cam. Apostol. Advocatus*.

† E.g., xi., 141, 251.

‡ E.g., vi., 19.

§ Earle, Anglo-Saxon Land Charters, p. 435.

|| The following among numerous examples will suffice. The Canonists put the canonical impediments to matrimony into hexameters;

Error, conditio, votum, cognatio, crimen,  
Cultus disparitas, vis, ordo, ligamen, honestas,  
Si sis affinis, si forte coire nequibis.

The Termes de la Ley said in English

Whatever moved to kill the dead  
Is deodand and forfeited.

¶ In such lines as

*Quædam, si credis consultis, mancipat usus.*

\*\* E.g., *Jus civile bonis reddidimus* (Preface 18).

†† E.g., *Curam agens sui gregis*

*Pastor bonus, auctor legis,*

*Quatuor instituit*

*Quadri orbis ad medelam,*

*Formam juris et cautelam (=cautionem).*

*Per quos scribi voluit.*

writers, are fond of bringing law into their verses. Equally removed from the present point of view is the position of those legal writers,\* or of the law itself,† who treat poets and poetry for other reasons than the present. The affinity of poetry and law is no new thing; Cino da Pistoia is not least among sonnet-composers; Sir John Davies was Chief Justice of Ireland, and Donne proved that an epithalamium could be written even at Lincoln's Inn.‡

The most frequent form taken by procedure in poetry is that of a dispute between litigants. Disputes and decisions are as old as the human race, and the judgment of the Lord out of the whirlwind (the Bath-Kol) in the book of Job was not the first precedent.§ The form of the *contentio*,|| or *tenson* or *tenso*, its abbreviation in Provençal, has been a commonplace in poetry since at least Theocritus. It will be the aim of the writer to give instances of what may be called the legal *tenso* through literary history, and afterwards to subjoin various poems or parts of poems which do not fall quite under that head.

\* Different views as to the effect of the study of verse on lawyers are taken by Wynne, *Eunomus* (5th ed., 1824), and by Henriot, *Mœurs Juridiques*, iii., 199 (Paris, 1865), who has for the title of one of his chapters the antipathy of poets for the profession of advocate. The effect has been considered at length in such works as Braga, *Poesia do Direito* (Oporto, 1865), Costa, *Concepto del Derecho en la Poesia popular Español* (Madrid, 1884), and J. Grimm, *Von der Poesie im Recht*.

† *Poetæ nulla immunitatis prærogativa juvantur*, Cod. x., 52, 3. The Icelandic *Vígslossi* (Grágás, ii., §107) deals with *skaldskap* at *sökia* (*actio in poetam*) for scurrilous verse.

‡ The troubadours were often lawyers. Thus Peire de Vilamur, Bachelier en Leys, won the *gauch* (prize) at the floral games in 1465 for his *Dansa d'Amors am Refranb*, the refrain being *De la flor quem fay pensar*. See Las Joyas del Gay Saber, p. 214.

§ In one of the Bentley cases in 1723, Mr. Justice Fortescue relied on a still earlier precedent: "God himself," said the learned Judge, "did not pass sentence on Adam before the latter was called upon for his defence" (*Rex v. Cambridge University*, 2 Strange, 1157).

|| The word occurs in the classical jurists. Instances are Gaius iv., 60; Dig. xii., 6, 43.

Whether Theocritus were the original inventor of the poem in amœbean verse with the decision of a third person, it is impossible to say. Possibly it may have been a reminiscence of the stichomuthia of the dramatists. It is sufficient for the purpose of the present article that he is for us the father of the tenso. The form appears in Idyll v., where Morson decides between Lakon and Komatas and Idyll viii., where a goat-herd does the same between Daphnis and Menalcas. Virgil's Eclogues iii. and vii. are of similar structure; in both eclogues there is an umpire; but in the latter he decides in favour of one of the competitors, while in the former he declines jurisdiction in technical terms:

*Non nostrum inter vos tantas componere lites.*

This form was continually followed in pastoral poetry, e.g., in Barclay's Eclogues and Spenser's Shepherd's Calendar, besides numerous foreign ones, such as the eclogues of Ronsard, Bocage, and many others. The tenso form occurs occasionally in post-classical Latin poetry, as in the Carmina Burana.\*

We next come to the richest field of research, the Romance languages, and space will allow of little more than a brief sketch of certain types. The amount of material is large, for originality of form was not to be looked for. The Provençal poets especially followed one another in blind admiration; lawyers and laymen alike had a loyal regard for precedent. The fact—already mentioned—that many of the troubadours were lawyers may have had some effect on the popularity of the form. It would have been comprehensible even to laymen, for it occurs only in the Court-poetry, which circulated among a class in which the traditions of the Roman law were never wholly lost.

\* See, for instance, the Contest of Wine and Water, Symonds, Wine, Women, and Song, No. 50. In the end the poet as arbitrator awards that wine and water are so litigious that they are never to be mixed.

*Provençal*.—The poetry of procedure was of several kinds, the *tenso*, the *partimen* or *jeu parti*, and the *guerrier*, the differences being very slight. The principle was the same, an argument and a decision. This kind of verse may have been founded on a reminiscence of the disputations in the Universities and of the Greek and Latin pastorals as well as of real proceedings in the Courts. However this may be, the structure of such poems was reduced to an exact science. For instance, it is laid down in *Las Leys d'Amors* that the judgment ought to follow the form of law and make mention of the Evangelists and other words customary in judgments, though they are not necessary.\* The Court is composed sometimes of a single Judge, sometimes it is a Divisional Court. An example of the former is the *Jeu Parti* entre Guilhem Augier et Guilhem. They dispute whether reason (*sens*) is of more value than wealth (*manentia*), and call in a palmer (*Romeus*) who gives judgment in favour of the former.† Very often the Divisional Court is composed of ladies, as in the *Arresta Amorum* of Martial d'Auvergne (15th century), where the lady judges were

*Toutes légistes et clergesses,  
Qui sçavoient le décret par cœur.‡*

Sometimes there is no final judgment, as in a *tenso* of Aimeri Peguilhan. The poet complains of his lady to

\* Bartsch, *Chrestomathie Provençale*, 375. The allusion to the Evangelists probably refers to the common form of noticing in the judgment that the witnesses had taken the corporal oath on the Evangelists, *sacris scripturis tactis*, Cod. iv., 1, 12, 5. The Gospels were by a Constitution of Justinian always to be present in Court during judicial proceedings, Cod. iii., 1, 14.

† Bartsch, 71.

‡ An allusion to the lady judges of the Court of Love at Avignon is supposed by Fontanini and others to be contained in the line of Petrarch :

*Dodici donne onestamente lasse.*

(Sonnets in *Vita di M. Laura*, clxx.)

If this be the case, it offers a tempting opportunity for theorising on its connection with the English jury, as far as regards the number.

Love, who in the end advises a settlement and defers judgment. This is not the place to discuss the question of the real existence of Courts of Love; it is sufficient for the present purpose that the Provençal poets treated them as existent and as bound by principles to guide their judgment—as the reader of Chaucer will remember—and even by rules of procedure.\* The latter, however, seem to exist only in prose, and so do not fall within the scope of the present article.

*French.*—Among numerous examples one of the best is a poem of Jean le Houx, or of Olivier Basselin, whichever was the real author of the *Vaux de Vie*, published in the 16th century. It is given here in the admirable translation of Mr. J. P. Muirhead, published in 1875.

If thirst must indicted be,  
     Then I never wish to raise  
 A dilatory plea.  
 Ham is an accessory  
     Upon which I found my case.  
 When a drinking suit is mine  
     Then I always would dispense  
 With a contradicting line,  
 And all argument resign,  
     If they pay me my expense.  
 As my main substantial ground  
     Thirst and heat I mean to keep;  
 My case lies in goblet round;  
 In default I'm never found,  
     \*Though the cup be ne'er so deep.  
 Rubric, paragraph, the task  
     Might attempt, but all in vain,  
 Trying some authentic flask;  
 Practice there is all I ask,  
     When I would its contents drain.

\* "They found that Love resembled a process at law, and more particularly the practice of the *Cours d'Amour*, as actually constituted," Courthope, *Hist of Eng.: Poetry*, i., 354.



Then the poet says in effect in the remaining stanzas, "If I have to decide between law and drink, away with lawsuits, say I, and let us drink!"\* Probably in his sober moments Jean reversed himself on appeal, for was he not an advocate of Caen?

In the Bibliothèque Elzevirienne several examples occur; *Le Procès des Femmes et des Pulces* (written about 1520) is hardly quotable.† Of about the same period is *Le Procès des Deux Amans plaidyant en la Court de Cupido la Grâce de leur Dame*.‡ The preference expressed by Louis XII. for Parisiennes over Rouenniennes was the ground of a *Débat des Dames de Paris et de Rouen*, related by the supposed advocate of the Parisiennes and ending in their favour.§ A peculiarity of French literature is the occurrence of an allegorical prose tenso in Gerson's *Traité contre le Roumant de la Rose* (written in 1402). There the author feigns that he is in the Court Christian, presided over by Lady Canonical Justice and her assessors Mercy and Truth, who received the complaint of Chastity against the intolerable forfeitures which one named *le Fol Amoureux* had caused her.||

*Italian.*—The sonnet of Cino da Pistoia, a translation of which appeared in the February number, is one of the most finished and artistic of the kind. There are tendencies towards the tenso in some of Dante's sonnets,¶ but the style was not fully worked out by him. A very interesting one is Petrarch's canzone *Quell'antico mio dolce empio signore*; in which the severe brevity of Cino's sonnet is expanded into a long poem by a master hand. Baldly analysed it runs thus. My old adversary (*i.e.*, Love) was cited by me

\* *S'il faut procéder par le boire*, p. 179.

† *Recueil de Poésies Françaises des xv<sup>e</sup>. et xvi<sup>e</sup>. Siècles*, x., 61 (Paris, 1875).

‡ *Id.*, 170.

§ *Id.*, xi., 1.

|| See Courthope, *Hist. of Eng. Poetry*, i., 185.

¶ As in the sonnet

Due donne in cima della mente mia ;

*Canzonere*, iv., sonnet 26, of Dr. Moore's edition.

before the Queen, whose is the part divine of our nature, and who sits in the highest heaven. The plaintiff began, "Madonna, in my youth I set foot in the defendant's realm and never had anything but anger and disdain, and suffered torments so many that my infinite patience was well-nigh exhausted and I hated life itself. Love took from me all my peace and gave me war instead. I served God too little and my lady too well. Love made me seek desert places, barren thickets, barbarous men and manners. Since I have been his I have lost my peace, sleep is banished from my nights and may not be recovered by simples or magic. Tears, martyrdom, and sighs wear me out." To whom Love, the defendant, with bitter reproof, "Lady, hear the other side. The plaintiff in his youth was given to the art of selling words and lies. Raised by me to higher things he shames him not to complain of me—me who kept him free from the evil thoughts that wrought his harm. He knows the story of Atrides, and Alcides, and Hannibal; they loved basely; but as to him, I gave him the heart of the noblest lady that the world hath known since Lucretia, and so sweet a language and so lovely a song did I grant him that before it no base thought might stand. From good seed reap I an evil harvest. I gave him wings to soar to Heaven and he forgot me for the lady whom I gave him for pillar of his weak life." Then cried I, "Yea, he gave her, but soon he took her away." He answered, "Nay, not I, but He who took her to himself." In the end both turned to the seat of justice, the poet with trembling voice, Love with words high and harsh, and each says, "Noble lady, I await thy sentence." She smiled and spake, "It pleases me to have heard the question mooted, but time is wanted for so great a cause."\*

\* In *Morte di M. Laura*, Canz. vii. The decision is perhaps a reminiscence of Cino's and that again of Virgil's.

*Spanish*.—In the various Cancioneros there are frequent instances of more or less merit. The peculiarity of one is that in a complaint of a lover against his lady in the Court of Love prose and verse are mixed; in the end Love gives no decision, but says that he is weary of the whole matter.\* The long and notorious *Pleyto del Manto* is in full judicial style, with counsel's speeches, evidence of witnesses, judgment, and appeal, but the subject-matter is such as can hardly be printed here.† In more modern poetry a sonnet of Yriarte's is noticeable. The poet complains to Apollo, the justiciary,‡ that the God did not allow Yriarte's verse to be richer. Apollo answers the petition in the Court of Parnassus, and says that the reason is obvious, the petitioner had not sung the praises of Orminta.

*Portuguese*.—One of the longest and most finished pieces of the kind is the tenso known as *O Cuydar e Sospirar*. Jorge de Silveira and Nuno Pereira contest for the love of Lyanor da Silva. Both present their petitions to the lady and each nominates two procurators (*ajudadores*). The procurators are heard and argue at great length the respective merits of loving and sighing. Various objections are taken at different points of the argument by the procurators. Finally the lady, after disposing of some minor points, reserves judgment, which is in the end given in favour of sighing on the authority of the text-books.

*Que o tem favorecido*

*Estes livros que revolve.*

An appeal to the Court of Love is lodged. The court of appeal reverses the lady and advises her to be more discreet in her law (*mays discreta em sua ley*). The appeal

\* Cancionero General of Hernando de Castillo (1511), Madrid (1882), No. 147.

† Cancionero de Obras de Burlas (1520). Appendix to above edition, No. 257.

‡ *A ti mé quexo, Apolo justiciero.*

part seems to be by a later hand. The whole process fills 106 pages of the *Cancioneiro Geral*, a compilation of Garcia de Resende in 1516.\* Some of the *louvores* or encomia in the *Cancioneiro* are in the form of the judgment of a lady in favour of one of the cavaliers who sing her praises in strophes of fixed length.

*Flemish.*—The great medieval epic of Reinaert de Vos (Reynard the Fox) was probably Flemish or Platt Deutsch in origin. Whether or not its earliest form was verse or prose does not much matter, as verse forms existed very early.† A free poetical version, as is well known, was published by Göthe as late as 1792. A short analysis of the satire from the legal point of view may be interesting as it is illustrative of the procedure of the period. Isegrim the wolf, with his kindred and friends, complain at the court of Nobel the lion, at Stade, of trespass and misdeeds by Reinaert.‡ The defendant should have taken his corporal oath on the Gospels that he was innocent, but he did not do so. Other charges followed, among them that he assaulted Cuwaert the hare, who was in the king's peace. In the end Bruun the bear and Tibeert the cat are sent as summoners to Reinaert, but on their failure Grimbeert the badger goes and brings him to the Court. Reinaert says (but apparently only in Caxton's translation) that he had been to school at Oxford and was licensed in both laws (civil and canon). He is

\* Edition of Stuttgart, 1846, i., 1.

† The earliest appears to be that printed at Lübeck in 1498. The best edition of the verse text appears to be that of Ernst Martin, *Willems Gedicht van den Fos Reinaerde* (Paderborn, 1874).

‡ Compare with this the procedure of the *secta* in England, in which no doubt kinsmen would often be chosen as oath-helpers for convenience, though not required by law. In *Leges Henrici Primi*, lxiv., 4, there is a reference to purgation in a charge of homicide by the oath of kinsmen. The importance of the kindred (*Mag*, *Magburh*) in pre-conquest law is obvious to any reader of the laws of the kings from Alfred downwards.

condemned to be hanged, but on a false tale of a treasure Nobel the King, at the Queen's request, pardons him on condition of a pilgrimage to the Holy Land.\* On further complaints against Reinaert (who had not fulfilled the condition),† the King is wroth, but the Queen again intervenes, saying, *Audi alteram partem*.‡ Reinaert is cited and produces the opinion of Mertijn the ape (who had been advocate to the Bishop of Cameryk), that the Archdeacon who had put Reinaert under the censure of the Church should be cited and put to his defence, and that the censure should be remitted under pain of papal interdict. The King being against Reinaert on this point, Firapeel the leopard urges that the King cannot go beyond the verdict of his men. Finally, Isegrim challenges Reinaert, who takes up the glove. The King fixed a day and field, and took pledges§ of the combatants. Reinaert wins by unfair means, and the King makes him of his Council and one of his Justices.

*German.*—Examples do not seem to be frequent. Heinrich von Meissen, known as Frauenlob, had about 1300 a poetical contest with Barthel Regenbogen as to whether *frau* or *weib* were the more honourable title of

\* Instances of the imposition of such a condition appear in French records, possibly not in English.

† Conditional pardon is not complete until the condition be fulfilled. For a statutory instance of conditional pardon, see 16 & 17 Vict., c. 99. For conditional pardon of an approver under the older law, see Stephen, *Hist. of the Crim. Law*, i., 256.

‡ This maxim does not appear in so many words in Roman law texts, but it has often been assumed by the Courts in all countries as an elementary principle of justice. The nearest approach to it in Roman Law is, perhaps, *Ea quæ altera parte absente decernuntur vim rerum judicatarum non obtinent* (Paulus, Sent., v., 5A, 6).

§ "Borowes" in Caxton's translation. The term lawburrows is still used in Scotland; the word also occurs in the headborough of the tithing in old law (*capitalis plegius*), the other nine being handboroughs. They were sureties for the due appearance of the accused.

women. Meissen supported the former—even against the high authority of a previous decision of Walther von der Vogelweide—whence the name by which he is usually known.\* In the sixteenth century Johann Fischart expanded the *Procès des Femmes et des Pulces*—already mentioned—into a poem of 4,315 verses, and made the judicial authority different. In the French poem the judge was a minorite friar, in the German it was the *Chancelier des Puces*.†

*English.*—There seems to be no *contentio* in early English poetry, but in the middle English period examples are fairly frequent. One of the earliest is the Hule and the Nightingale, probably written in the reign of Edward I.‡ A dispute arising between the owl and the nightingale, both parties agree to refer the question as to which was the better singer to Maister Nichole of Guldeford. The poem ends by both going to look for the arbitrator, but as to the decision the writer gives no information. The Vision of William concerning Piers the Plowman is full of law. It was written at a time when reform was in the air, and probably both the land law and the procedure were inexhaustible topics of conversation, and not merely confined to lawyers. The period from 1361 to the last years of Richard II. is marked by statutory changes of the law of the highest importance. Purveyance, labourers, escheators, mortmain, prohibition, maintenance, papal provisions, were matters of substantive law falling under the notice of Parliament; and as to adjective law, every year of the period saw amendments, or attempted amendments, of the practice of the Courts in the matters of pleading, arrest, venue, mainpernors, and many others. As to the procedure part of the poem, in Passus iii., iv. and v., Theology objects to the

\* The contest is described in Scherer, *Hist. of German Lit.*, i., 210 (translation by Mrs. Conybeare).

† Flöh Hatz, Weiher Tratz (1573).

‡ Courthope, *Hist. of Eng. Poetry*, i., 136.

marriage of Falsehood and Lady Mede (Bribery), on the ground of her pre-contract to Truth.\* Meed is arrested by beadles and bailiffs and brought before the King's Court at Westminster. The King summons Reason as an assessor. He advises the King to do justice, and Meed has to become mainpernor for future good behaviour.† In Chaucer the Court of Love and the Cuckoo and the Nightingale have something of a legal aspect, but in the Assembly of Fowles the actual procedure of the King's Court seems to be the principle on which the poem is framed. The plot, probably derived from a French fabliau, is as follows:—The poet dreams that he comes on St. Valentine's Day into a garden where sits the Goddess of Nature, and to her presence came all fowls "to take her doom." A formel eagle is set for a prize as mate to the most worthy fowl. Three tercel eagles state their pretensions. Certain birds give what may be called a verdict. Nature calls on the formel eagle for judgment. She says *Curia advisari vult*, and asks for a year to prepare judgment, which is conceded. Dunbar's Golden Targe deals with the Courts of Venus and of Cupid, but there seems to be a confusion—intentional or not—between the two meanings of the word Court, just as in *curia regis*.

\* At that time pre-contract was an impediment to marriage. The disability of pre-contract was abolished by 32 Hen. VIII., c. 38, then revived and re-enacted, finally abolished by Lord Hardwicke's Act, 26 Geo. II., c. 33, s. 13, re-enacted by 4 Geo. IV., c. 76, s. 27. Not only was it an impediment to marriage, but either party to the pre-contract might, until Lord Hardwicke's Act, sue in the Court Christian for specific performance of the contract. See *Baxter v. Buckley*, 1 Lee 42.

† This is perhaps not very correct law. The mainpernor seems to have been a person other than the accused. "The writ *de manucaptione* (of mainprise) was appropriated to cases in which a person had been taken on suspicion of felony and had tendered manucaptors or mainpernors who had been refused" (Stephen, *Hist. of the Crim. Law*, i., 240). Further, Meed does not seem to have been in contempt, and the fact of an alleged pre-contract was scarcely ground for arrest. But Langland was not writing a work on procedure.

Gavin Douglas' Palace of Honour is more distinctly legal. The poet is put on his trial before the Court of Venus for writing a libellous ballad against the goddess. He pleads to the jurisdiction, not the very good plea that the goddess was judge in her own cause, but (1) that ladies may not be judges; (2) that the writer, as a spiritual man, is not amenable to a lay court, but ought "to be remit to my judge ordinair." He is granted a conditional pardon, the condition being the writing of a ballad in praise of love. The rest of the poem is a fulfilment of the condition. In the Elizabethan period several instances occur. Among others may be mentioned His Heart arraigned of Theft and acquitted,\* and Sidney's *Astrophel and Stella*, Sonnet 52.

The type of poem continues as a living thing through the centuries. It passes down through Cowper's Report of an adjudged Case† to the present year, in which the following verses by the writer appeared in a periodical. They are not claimed to be particularly good as verse, but they are an illustration of the type.

#### WINTER AND SPRING.

With ice and snow his hoary haired assessors  
Sits winter on his throne that is a tomb,  
Accounting bright and happy things transgressors  
Meet for severest doom.

"Fair flowers, ye smile, blithe birds, ye sing together,  
Swift streams ye hasten onward to the sea,  
Delight have ye of sun and summer weather  
In high contempt of me.

"Wherefore my sentence is that ye be taken,  
Birds, flowers, and streams, and each be made my thrall,  
Till hearts of men shall be by hope forsaken,  
And I be lord of all."

\* Davison's *Poetical Rhapsody*, (ed. by Bullen, 1891), i., 37. The poem is by A. W.

† The well-known

"Between nose and eyes a strange contest arose."



The flowers appeal, and ready for revision  
 Sits Spring in Council, June is there and May,  
 And all aggrieved by Winter's dire decision ;  
 Then gravely Spring doth say :  
 " This Court whereof I am presiding member  
 Affirms the judgment, varying it thus,  
 Appellants are from March until September  
 To be demised to us."

A few cases of poems dealing with procedure not in the *tenso* form are worth a short notice. In them all the poet is more or less under the influence of legal ideas, and in the first case, that of the will, there is almost as long and complete a continuity as in the *tenso*.

*Wills*.—At what time or in what language the poetic will began cannot be said, but examples occur certainly as early as the fifteenth century in the famous Grand and Petit Testaments of Villon. In the *Cancionero* of Hernando de Castillo already mentioned there are two, *El Testamento de Amores*\* and a similar one supposed to have been made by a Portuguese.† Among later romances in imitation of the older *Romancero* poems the testament of Don Quixote became a commonplace, and appears in several forms. Sanchez de Badajoz went rather farther, and wrote his own will in poetry, beginning in proper form and proceeding at great length in nine *leciones* or lessons.‡ Numerous French verse wills occur in the *Bibliothèque Elzevirienne*, already mentioned. In England there is Gascoigne's Last Will and Testament, and there have been many real wills which the eccentricity of testators has led them to clothe in rhyme. Many of them will be found in books dealing with the curiosities of law.

\* Edition of 1882, No. 154.

† Id., No. 207.

‡ *Pues que yo en tiempo tan fuerte  
 Quiero ordenar mi postrema  
 Voluntad.*

*Trial by Battle.*—In addition to the case in Reynard the Fox (above) in which was enacted the dramatic scene which we did not finally lose sight of in England till 1819,\* both Icelandic and French literature supply further instances. Thor's wager of battle with Rungai was versified by Thiodwolf, though it is only fair to say that the wager is not prominent, as it is in Snorri's prose version.† In Huon de Meri's Tournoyement de l'Antechrist, the virtues under Christ engage and defeat the vices under Antichrist. This is only one out of many examples of the idea of the *judicium Dei* in medieval romances, both prose and verse. The idea may be derived partly from the tournament, partly from the judicial combat.‡

*Citation.*—The familiar lines of Shakespeare's sonnet,

"When to the sessions of sweet silent thought  
I summon up remembrance of things past,"

suggest the consideration of poems in the form of citation or summons. The troubadour poetry, full of legal phrases as it was,§ had more than one attempt of this kind. A citation

\* 1 B. & A. 405; 59 Geo. III., c. 46.

† Corpus Poeticum Boreale, ii., 16. The ordeal also occurs in Icelandic verse in the vigorous description of the ordeal of Gudona, id., i., 322.

‡ For the importance of the idea in the *De Monarchia* of Dante see the February number of this Magazine.

§ As in Peire Rogier :

*Mon Tort n'avetz préc, s'a leis platz,  
Qu'aprenda lo vers si es bos,  
E si vol que sia trames  
Mon Droit n'a-leis lai ou ill es ;  
Deus sal e quart lo cors de leis.*

Bartsch, 82.

In modern French law it is thought necessary to give the president of the Court in a criminal trial power *qu'il peut interdire à un accusé de présenter sa défense en vers*, Hélie, *Pratique Criminelle*, i., 421. Such a rule of law is hardly necessary in England. The writer, however, well remembers a prisoner at assizes handing to the Court a written defence concluding with the pathetic lines :

I didn't go for to do it,  
But I'm here through it.

of the Consistory of the Gay Science at Toulouse is contained in *Las Joyas del Gay Saber*.\* It is by an anonymous writer, and runs thus in bald prose: "To all experts in the art of rhetoric, commonly called Gay Saber, who are wont to collect the first day of May at the present city to practice nobility and give lovely flowers, we, Chancellor, have set commandments; we make known that next Sunday we shall give as is meet a branch of silver for the pear of pain.† And it is also our will to remind you to make compositions new and well divided, complete in three stanzas only of nine lines each, so that your good sense may be notable in the verses, for by knowledge ye will come to great honour. And above all forget not that this refrain fail not at the end; To the heart doth strike me the pear of pain."

JAMES WILLIAMS.

#### IV.—SOME THIRTEENTH CENTURY STATUTES. II.

IN a recent number‡ of the *Law Magazine* I referred to the history of the Provisions of Merton, a subject which I propose to consider further in the present article. But before speaking of the Provisions, I shall add a few remarks to those, which I there made, on the *Assisa Panis*.

The instrument printed in the Statutes of the Realm does not differ in substance from those found in Bracton's *Note Book*§ and the *Annals*|| of Burton; and it is probable that

\* P. 235.

† *Hun branc d'argent am la pera d'enguays*.

‡ At the time of writing my last article I was not aware that Dr. Gross had published the *Statutum de Judæis exiundis* in his *Exchequer of the Jews*. His text, however, is not taken from the Memoranda Rolls.

§ Vol. iii., p. 302.

|| *Ann. Mon. (Chron. and Mem.)*, Vol. i., p. 375.

it was framed in the year 1256 as stated by the Annalist. But it certainly is not the earliest form of the *Assisa Panis*. Long before the year 1256, we find upon the Plea Rolls cases which relate to the assize of bread; and they shew not only that it was observed throughout the Kingdom, but that a right of enforcing its provisions was a franchise frequently vested in lords of manors and hundreds, and one the possession of which was much coveted.

It seems from a codex at the British Museum that the price of corn was regulated by an ordinance, in which, however, no precise date occurs, made in the reign of Henry II. This ordinance contains a fully worked out scale made by the King's Bakers. It has been printed by Dr. Cunningham in an Appendix to the first volume of his *Growth of English Industry and Commerce*. Dr. Cunningham shews that its terms differ considerably from the *Assisa Panis*, of the Statutes of the Realm. The scale runs in the codex from a high price and a small weight to a low price and a large weight; while in the Statutes it runs in a contrary sense. This is merely a difference in form; there are also differences in substance. The range of prices extends in the codex from eighteenpence to six shillings a quarter; but in the Statutes it extends from two shillings to twenty shillings a quarter. The gradation of the scale is also different in the two instruments; and there is a larger allowance given to the baker's servants in the assize of the year 1256 than in that of Henry II.

In the following reign another assize<sup>o</sup> of bread was framed. It is written in the Red Book of the Exchequer\* and begins:—

Haec est assisa facta coram Huberto Walteri Cantuarensi Archiepiscopo et coram Episcopis et omnibus Anglis apud Cantuariam per Regem Ricardum.

\* Red Book of the Exchequer (Chron. and Mem.), ii., 750.

There is also a codex\* in the British Museum, from which we learn that the price of corn was regulated once again in the reign of John. But in this case its introductory words leave us in no doubt as to its date. They are as follows :—

Anno graciae MCCIJ Rex Iohannes fecit generaliter acclamari per totum regnum Angliae vt assisa panis inuiolabiter sub pena collistrigialit<sup>†</sup> obseruaretur ; quae probata fuit per pistorem G. filii Petri Iusticiarii Angliae et pistorem R. de Tonay ita quod. . . .

Roger de Toenay was evidently one of King John's counsellors, as his name is frequently found among those of witnesses to royal charters about this time ; but it is uncertain what office, if any, he held in the administration. Its actual terms are much the same as those of the earlier ordinances, but they are rather more detailed.

The same codex contains a chronicle of the kings of England ending at the forty-second year of Henry III. ; and it would seem from this that the ordinance of John remained in force till the time of the substitution of the new scale of prices given in the Annals of Burton.

*Fleta* and *Britton*, both of which were written in the reign of Edward I., contain versions of the *Assisa Panis*, similar to that in the Statutes of the Realm.

It may be objected that an investigation into matters such as the Assize of Bread belongs rather to economics than legal history. But any information as to the nature and objects of early legislation materially concerns the latter subject ; while the form and style of every early ordinance deserve careful attention. But beyond this any fact which may assist in determining the date of a manuscript comprising statutes and legal treatises is of importance. If we can be sure of the date of an article in one part of a

\* Julius D., vij.

† Pillory.

codex, we may possibly draw some inference as to the date of an article in another part. For instance, the codex in which the *Assisa Panis* of John occurs, also contains a transcript of the Provisions of Merton. The fact that this ordinance was replaced in the year 1256, or thereabouts, by another, and the fact that the chronicle which precedes it stops at about the same year are evidence of the time when the codex itself was written. It may indeed reasonably be inferred, that we have here a copy of the Provisions of Merton in the form, in which they were known to lawyers some five and twenty years after they were enacted.

Inasmuch as this transcript of the Provisions comprises the six clauses only, which were contained in the writs sent to the sheriffs, ordering them to proclaim the new laws, we have further evidence that these laws comprised no other clauses.

Let us now consider the clauses included in the Provisions of the Statutes of the Realm, but not included in the writs sent to the sheriffs. Of all of them the one which refers to the unlawful marriage of heirs under fourteen is the most embarrassing. There are no references to it on any of the Chancery rolls for the year in which the Provisions were made nor on those of the next preceding or succeeding years. On the other hand, forty years later it was officially considered to be an integral part of them; for we read in the Statutes of Westminster the First,

Des heyrz mariez dedenz age saunz le gre de  
lur gardeins auant le age de quatorze aunz seit fet  
solum ceo quil est contenu en la Proveaunce de  
Merton.

Any satisfactory explanation of the absence of this Provision from the writs to the sheriffs, and from the early transcripts, ought to explain how it subsequently became inserted in the later transcripts, and became officially

recognised by the Statutes of Westminster the First to be a part of the Merton legislation.

It appears from the Annals of Tewkesbury that on the death of Gilbert Earl of Clare in 1230, the king entrusted Richard de Clare his son and heir to the guardianship of the illustrious Hubert de Burgh, Earl of Kent, and that the boy remained in his custody until October, 1232, when the King deprived De Burgh of all his offices and granted this wardship to his favourite Peter des Roches. While Richard was in his custody, De Burgh seems to have arranged for the boy's marriage with his daughter Margaret; and a marriage was afterwards solemnized between them. The Annals of Tewkesbury\* tell us that the young Earl was born in August, 1222; and the Annals of Worcester† give the date of the marriage as 1236. There is some little doubt as to this last date; but in any case the boy was married before he had completed his fourteenth year. When the King pardoned De Burgh, at Gloucester, in 1234, he made him swear that he would never speak of Richard de Clare again.

‡ On the morrow of Michaelmas, in the twenty-first year of his reign, Henry summoned De Burgh to answer for his conduct in allowing his daughter Margaret to marry the Earl of Clare. De Burgh asked for further time, so that he might have advice as to his defence. The King gave him another day at Kennington, and on the appointed day the accused appeared, and said that he had not meddled with the marriage since peace was made between the King and himself at Gloucester. His story was that his wife, the Countess of Kent, had declared in his absence that matters had gone so far with her daughter, that there

\* Ann. Mon., i., 66.

† Ann. Mon., i., 102.

‡ The story is told on the Close Roll for 21 Hen. III., but the whole has been re-printed, not without errors of transcription, in Shirley's *Royal Letters* (Chron. and Mem.), ii., 375.

must be a marriage, and accordingly a marriage there was at St. Edmonds, while he himself was being besieged by the King at Merton and knew nothing of Richard de Clare. If this story be true, the marriage must have been solemnized as early as 1233.

It is clear that the marriage question was being agitated before the date of the Provisions, probably while Richard de Clare was in the custody of De Burgh. There is also evidence that the King only heard of the marriage afterwards. He certainly felt very strongly on the subject. It may well be that he proposed at the Parliament at Merton a new law concerning wards; that his proposals were not approved at the time, but that he afterwards succeeded in getting the assent of his council to the clause, which is now considered to form part of the Provisions.

It will be remembered that the clause, which deals with the time of limitation in writs of right and certain other writs, does not occur in the writ sent to the sheriffs ordering the new laws to be proclaimed: but that an order was given in the following year that it should be observed in Ireland as in England. The Statutes of the Realm contain a copy of this order, but they do not notice the fact that the whole clause is written on the Close Roll\* of 21 Henry III. as a new piece of legislation. Now it is very significant that in the margin opposite to the enrolment the word *approbatur* is written. The Provisions as they are printed contain two clauses which relate to matters said to have been discussed at the Parliament, but not the subject of legislation—special bastardy and trespasses in parks. No great effort is required for a belief that the clause which deals with the limitations in writs was also discussed at the Merton parliament; and that the discussion resulted in the ordinance on the subject in the following year. Perhaps the same

\* Close Roll 49, memb. 17, in dorso.



council which approved this ordinance also approved the Provision relating to the unlawful marriage of wards under fourteen.

The eighth clause of the Provisions of Merton had already been the subject of an ordinance. In the eighteenth year of the reign a parliament was held at Westminster; and its proceedings and the names of the bishops, earls, and barons who attended it are recorded on the *coram rege* rolls \* for that year. Three ordinances were approved. The first was a bastardy ordinance which declared that when in any plea an exception was raised that the demandant was born before the marriage of his father and mother, the question, whether he was or was not so born, should be referred to the bishop. Pursuant to this ordinance a precedent of a writ was framed, which was directed to the bishop, and required him to answer the question specifically. The second and third ordinances of the same parliament relate to the assizes of *darein presentment* and *juris utrum*; and all three of them also occur in *Bracton's Note Book*.

At this time the bishops felt strongly that children born before marriage ought to be as legitimate as those born afterwards. When, therefore, they were directed to make an inquisition pursuant to the ordinance, they objected to giving the specific answer required by it; and at the Merton parliament the law relating to such bastardy, which was called special bastardy, is stated to have been discussed. The bishops said that they would not and could not answer the question *quia hoc esset contra communem formam ecclesiae*; the barons that they would not change the laws of England *quae usitatae sunt et approbatae*. Matters remained afterwards as they were then. The bishops

\* The particular roll is one of those included in the rolls now called *Curia Regis Rolls*, 115.

refused to answer the question, and the barons refused to amend the law.

The position which these three ordinances occupy on the *coram rege* rolls leaves us in no doubt about their date. But if there could be any doubt, it would be dispelled by the fact that the precedent of the writ to be addressed to the bishop ordering him to make an inquisition of special bastardy is written on the Close Roll of the eighteenth year of the reign; and immediately above this precedent there is written one of the other ordinances which were made at the same time.

Now Bracton, both in his treatise and his Note Book, appears to have inverted the order of events, and to have imagined that the ordinance of the eighteenth year was the result of the discussion of the twentieth year. The Note Book follows the enrolment on the *coram rege* rolls, but with some important variations. First, there are no dates. Secondly, the bastardy ordinance is introduced by a clause, which in substance combines the preamble to the Provisions of Merton, as printed in the Statutes of the Realm, with their eighth clause about the refusal of the barons to alter the law. Thirdly, the ordinance begins with the words, *Postea uero alio die*. In his treatise he gives dates. The introductory clause is dated on the same day as the Provisions of Merton, that is the morrow of St. Vincent; while the ordinance is dated on the same day as the ordinance on the *coram rege* rolls, but in the same year as the Provisions, that is, the twentieth instead of the eighteenth year of Henry III. In other respects the treatise and the Note Book agree.

The story\* as told in the treatise must be inaccurate; for we have positive proofs that the bastardy ordinance was

\* It is discussed fully in the introduction to the Note Book; but nothing is said of the ordinance relating to attorneys to be noticed presently.

made in the eighteenth and not in the twentieth year of the reign. But the Note Book gives us no dates, and it is conceivable that it is, in substance, an accurate account of the sequence of events. It is possible that the baronial *Nolumus* was not uttered at the Merton parliament; it may, as Bracton states, have preceded the ordinance, and the ordinance may have been intended as a settlement of the dispute. One argument against this proposition is that there was no settlement; the bishops did not consent to answer the question to be referred to them under the ordinance. Another argument is a writ, dated 9th May, 1236, addressed to the Archbishop of Dublin and the Justiciar of Ireland. It states that in the preceding year it had been provided that such an issue should be settled by the bishops; that afterwards the bishops refused to determine the issue in the manner which had been provided; and that it was to be determined, in future, by the King's Courts. The writ is strong evidence that Bracton's story is false, both as regards dates and the sequence of events; and the learned Editor of his Note Book arrives at the conclusion that the *Nolumus* did in fact follow, and not precede, the ordinance. In spite of this, the evidence that the *Nolumus* clause belongs to the Provisions of Merton is not very strong.

The Provision which follows that dealing with special bastardy is in these words:—

Provisum insuper quod quilibet liber homo qui sectam debet ad comitatum thrithingam hundredum et wapentachum vel ad curiam domini sui libere possit facere attornatum suum ad sectas illas pro eo faciendas.

The writ to the sheriffs already mentioned says nothing about the appointment of attorneys. There is no such clause in the Provisions of Merton as they are stated in the history of Mathew Paris, nor in the Annals of Burton, nor

in either of the two\* codices at the British Museum, which contain early transcripts of the Provisions of Merton. In point of fact there had already been legislation about attorneys and of the same nature. Early in the eighteenth year of Henry III., almost two years before the Merton parliament, an ordinance issued from St. Edmunds, which treated the subject more fully. The instrument is enrolled upon the Close Rolls,† and there can be no possible doubt as to its date.

Rex vicecomiti Kancie Salutem Scias quod per commune consilium regni nostri prouisum est quod quilibet liber homo qui sectas debet nobis in comitatibus hundredis wapentacis et aliis curiis nostris libere faciat attornatum suum coram balliuo nostro ad sectam illam faciendam et curias domini sui et libertates exigendas et ad loquelas proseguendas et defendendas pro dominis suis motas in comitatibus hundredis wapentacis et aliis curiis nostris sine litteris nostris Prouisum est etiam quod quilibet liber homo qui sectam debet ad curiam cuiuscunque siue ecclesiastice persone siue laice attornatum suum faciat sine difficultate ad sectam pro eo faciendam et ad curias domini sui et libertates exigendas et ad loquelas proseguendas et defendendas pro dominis suis motas in curiis predictis sine litteris nostris ut predictum est, precipue cum in carta de libertatibus concessis probis hominibus regni contineatur quod tales libertates quales nos pro nobis et heredibus nostris eis concessimus tales teneantur suis et aliis in curiis et libertatibus suis. Et ideo tibi precipimus quod hanc prouisionem nostram et concessionem clamari facias et teneri per totam balliuam tuam et si quis distringatur ad sectam faciendam in curiis vel libertatibus alicuius uel impediatur quominus possit

\* That is Julius D., vij., and Harleian, 746.

† Close Roll 45, memb. 29, in dorso.

attornatum suum facere ad loquendas prosequendas et defendendas pro dominis suis motas sine litteris nostris in curiis et libertatibus predictis contra hanc prouisionem nostram tunc aueria sua propter hoc capta sine dilacione deliberari et plenam iusticiam inde exhiberi facias Teste me ipso apud sanctum Edmundum xij. die Februarii.

Eodem modo scribitur omnibus vicecomitibus Anglie.

In the face of this ordinance, it is hardly possible to contend that the ninth clause of the Provisions of Merton, as printed in the Statutes of the Realm, is a genuine piece of legislation. It can, indeed, hardly be represented as anything else than a brief statement of the law made two years earlier. This leaves the *Nolumus* clause in suspicious company. It follows the provision dealing with the date of limitation of writs of right, which was undoubtedly made after the Merton parliament. It is followed by another clause which almost certainly is a mere statement of a law made two years earlier. Though there is, as has been seen, strong evidence in favour of the *Nolumus* having been proclaimed at Merton, that evidence is hardly conclusive; and it may be that early in the eighteenth year of the reign special bastardy was under discussion, and the barons refused to alter the laws of England. If this could be established, then the ordinance on the *coram rege* roll was, as Bracton thought, no doubt intended to be a termination of the dispute; and the intention of the ordinance was only defeated by the bishops individually refusing to make the inquisitions which it required. Unfortunately for this theory Bracton himself mentions the *Nolumus* as having been uttered at Merton; and one of the two early transcripts of the Provisions at the British Museum contains the clause.

G. J. TURNER.

## V.—CURRENT NOTES ON INTERNATIONAL LAW.

### **The War Between Turkey and Greece.**

Several points of interest to Students of International Law arose in connection with the recent war between Greece and Turkey, though the absence at present of authoritative information precludes comment upon some of them. It is noteworthy that contemporaneously with the order to Edhem Pasha to advance into Greece, an Iradé was formally issued by the Porte,\* recalling the Ottoman minister from Athens, intimating that the Greek minister at Constantinople had received his passports, and requiring all Greek subjects in the Turkish Empire to leave the country within 15 days. The last-mentioned point evoked a protest from the Greek Government, which denounced it to the Great Powers as "contrary to the principles of modern civilization," and with a praiseworthy consistency refused to retaliate by issuing a similar order to Ottoman subjects in Greece.†

The French, Russian, and British Ambassadors resolved to grant joint protection to Greek residents in Turkey, and the French Minister went so far as to immediately issue letters of protection to various persons. At the same time the three ministers presented to the Porte a Collective Note, protesting against the Decree of Expulsion.‡ Shortly afterwards the Porte replied, resenting foreign interference in the matter, and claiming that the step was necessary for the maintenance of public order.§ A few days later, however, the Turkish Government consented to the Ambassadors according protection to Greek subjects, and

\* *Times*, 19th April.

† *Times*, 23rd and 24th April.

‡ *Times*, 29th April.

§ *Times*, 5th May.

issued a decree postponing the expulsion for a further 15 days.\* In spite of this, it appears that the original order was actually enforced in a considerable number of cases in spite of the protests of the Ambassadors.† The armistice, however, following upon the offer of mediation made by the Great Powers, postponed indefinitely the question of general expulsion.

There seems to be no doubt that the Ottoman Decree was an extreme measure not justified by modern practice. Theoretically, no doubt, a State can at any time expel aliens resident in its territory, and in case of outbreak of war even detain them and confiscate their property. Even so recently as 1803 Napoleon made prisoners of war all British subjects travelling in France; but such an exceptionally harsh instance is hardly to be quoted as a precedent. Prussian subjects in France, at the commencement of the Franco-German war, were permitted to remain, though it is true that later on the permission was in part rescinded owing to the exigencies of the war.‡

There is at all events no modern precedent for an immediate general order such as that issued by the Porte, and it is in some respects a pity that the intervention of the armistice prevented a definite enforcement upon the Ottoman Government of the views of the Ambassadors.

It would appear that a more or less "effective" blockade of the Gulfs of Volo and Arta was maintained by the Greek fleets during the greater part of the war. A British steamer loaded with oil was prevented from entering the Port of Volo,§ and it is stated that an Austrian Lloyd steamer proceeding to the same place with 72 Turkish

\* *Times*, 6th May.

† *Times*, 8th May.

‡ See the excellent notes in Halleck's "International Law," 3rd edition, Vol. I., p. 531 *et seq.*, by Sir Sherston Baker.

§ *Times*, 14th May.

seamen on board was captured by a Greek Torpedo Boat.\*

The Greek fleet seems in one or two instances to have exceeded the limits of modern usage as regards the bombardment of unfortified seaport towns and villages, but in most cases it would appear that the places in question were at all events occupied by bodies of Turkish troops, or used as temporary store places for provisions and munitions of war.†

It is difficult at present to judge of the accuracy of the reports of pillage, incendiarism and ill-treatment of prisoners by Turkish troops in Epirus and Thessaly; but there certainly seems to have been some basis for the charges.

The usual Royal Proclamation in Council was published in the *London Gazette* on the 4th May, at which date curiously enough the war was for all practical purposes nearly over. The Proclamation sets forth fully the provisions of the Foreign Enlistment Act, and warns British subjects against any infringement of it, and concludes by a general direction to all persons to observe towards the belligerents the "duties of neutrality," and not to do any acts "in violation or contravention of the Law of Nations."

Another Order appearing in the same number of the *Gazette*, was directed by the Foreign Secretary to the Lords of the Admiralty, requiring the enforcement of the "24 hours rule" as regards belligerent ships in British territorial waters. In view of the fact that the Turkish vessels never left the Dardanelles and the Greek fleet was never more than a day's sail from Athens, the order was quite superfluous. The good work, however, done by the "Foreign Legion" with the Greek army, made it evident that as regards most of the Constitutional European States

\* *Times*, 20th May.

† See *Times*, 24th and 26th April, as to Hagioi Saranti.



their respective Foreign Enlistment Laws were, except in flagrant cases of violation, permitted to be more honoured in the breach than in the observance.

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#### Cuban Expeditions and U.S. Neutrality.

The question as to whether our own Foreign Enlistment Act applies to expeditions fitted out to assist insurgents was not argued in the recent case of *R. v. Jameson*, 65 L.J.M.C., 218, and appears to have been tacitly settled in the affirmative both in that case and in the earlier one of *R. v. Sandoval*, 16 Cox 206. The analogous United States Statute has, however, on this point recently been the subject of express judicial interpretation in the case of *U.S. v. The Three Friends*, 17 Sup. Ct. Rep. 495, in connection with a filibustering expedition to assist the Cuban Insurgents. The American Statute makes it an offence to fit out a vessel to be employed "in the service of any foreign prince or state, "or of any colony, district, or people to cruise or commit "hostilities against the subjects, citizens, or property of "any foreign prince or state, or of any colony, district, or "people with whom the U.S. are at peace." The Supreme Court (Harlan, C.J., dissenting) held that the Cuban Insurgents, though not recognised as belligerents, are "a colony, district, or people" within the meaning of the Statute.

\* \* \*

The sympathy of a certain section of American citizens with the Cuban rebels has given rise to a very important judgment of the United States Supreme Court in the case of *Wiborg v. The United States*, 163 U.S. Sup. Ct. Rep. 632. The case arose out of the sailing, in November, 1895, from Philadelphia, of a Danish steamer, the *Horsa*, under the Danish flag and with a Danish captain. A body of men went on board a tug loaded with arms and boarded the

*Horsa*, which had previously by arrangement gone 30 or 40 miles out to sea. Once on board, they distributed arms, were officered and drilled, and eventually disembarked to effect an armed landing on the Cuban coast. The Court held that the prisoners, being the captain and two mates of the *Horsa*, were guilty of providing or preparing the means for a military expedition or enterprise within the meaning of the U.S. Foreign Enlistment Act (Revised Statutes, sect. 5286) since providing or preparing the means of transportation for such an expedition is one of the forms of provision or preparation within the Statute.

The question of a somewhat similar expedition to Cuba came before the Federal Court in the still more recent case of *United States v. O'Brien*, 75 F. 900. The Court dealt very exhaustively with the whole subject of violation of neutrality by foreign enlistment or equipping expeditions. With reference to the Statute above-mentioned, the conclusions laid down were very interesting and may be summarized shortly as follows: (1) It being lawful for individuals to go abroad to enlist, they may go in any number, and in any way they see fit, by regular lines of steamers, by chartering a vessel, or in any other manner, either separately or associated, provided always, that they do not go as a military expedition, or set on foot, or begin within the jurisdiction a military expedition or enterprise to be carried on from the United States or provide or prepare the means therefor.

(2) If the owner of a vessel provides and furnishes her knowing that she is to be used for the transportation to a foreign country of an organised body of men, intending to act together in a concerted military way, and with arms, he is guilty of a violation of the Statute.

(3) It is no offence against the laws of the United States to transport to a foreign country arms, ammunition, and materials of war, either alone or together, in the same ship

with men who intend to enlist, provided they are not a part of or in aid of any military expedition or enterprise set on foot within the Jurisdiction. In such cases the persons transported and the shipper and transporter only run the risk of capture, and the seizure of such arms and munitions by the foreign power against which the arms are intended to be used.

(4) The fact that men intending to enlist and arms and munitions designed to be used against a foreign power are carried in the same ship and landed in such foreign country, and that the men there handle and carry the arms and munitions is not of itself absolutely conclusive of a military expedition, it being possible that the men intend to act merely as individuals and carriers of the arms. In such case the existence of a military expedition is one of fact for the jury.

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#### The Cretan Blockade.

As we anticipated in our last issue, Crete has been rigidly excluded from the sphere of belligerent operations in the recent war. After the suspension of hostilities between Greece and Turkey owing to the mediation of the Great Powers, all vessels which had been seized for attempted breach of blockade were released,\* and the Blockade itself has since ceased to be strictly enforced.†

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#### The Arbitration Treaty.

The Treaty, signed early in the present year, after being "amended" by the Committee on Foreign Relations so as to be scarcely recognizable by its authors, was thrown out by the Senate on the 5th May last. Forty-three Senators voted for its ratification as "amended" and 26 against, the necessary two-thirds majority thus not being attained.

\* *Times*, 18th May, 1897.

† *Times*, 20th July, 1897.

**Foreign Bankruptcies.**

The question of the ex-territorial effect of a foreign or colonial bankruptcy arose in *In re Hayward*, *Hayward v. Hayward*, 1897, 1 Ch. 905. Under an English will a testatrix left a life interest in a certain trust fund to her son, determinable upon his bankruptcy or upon his doing or suffering "something whereby the same or some part thereof would . . . if belonging absolutely to him, become vested in or payable to some other person or persons."

The son was a domiciled Englishman, but was at the death of the testatrix temporarily resident in New Zealand, where shortly afterwards he was adjudicated bankrupt by an order of the Supreme Court of that colony. The bankruptcy was subsequently annulled, but the question arose as to whether it had caused a forfeiture of the life interest bequeathed by the will. Kekewich, J., following *In re Blithman*, L.R. 16 Eq. 585, and distinguishing *In re Davidson*, L.R. 15 Eq. 383, and *In re Lawson's Trusts*, 1896 (1 Ch.) 175, held that as the colonial bankruptcy could only operate as an assignment of the debtor's ex-territorial property if the debtor was domiciled in New Zealand, it did not produce a forfeiture. The general principle indicated seems undoubtedly a sound one, and is in accordance with the decision of the Court of Appeal in *In re Artola Hermanos*, 24 Q.B.D. 640. Both Westlake (§134) and Dicey (Rule 109) seem to regard the proposition as now settled beyond dispute.

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**Foreign Torts.**

A moot point of some difficulty has at length been settled by the Court of Appeal in the recent case of *Machado v. Jones*, 66 L.J. Ch. 542. The plaintiff sued the defendant for damages for an alleged libel published in Brazil. The defendant sought to amend his defence by pleading in effect

that by Brazilian Law no action for damages would lie ; or even assuming that it would, that the only damages recoverable would be special damages. The Court ordered the plea to be struck out, on the ground that the mere fact that a foreign tort is not *actionable* by the *lex loci delicti commissi* is immaterial, provided that it can be shewn that it was an act which was "*not innocent*" by the foreign law. Lopes, L.J., said "the general principle is that in order "that an action may be maintained in this country in "respect of a tort committed outside the jurisdiction, the "act complained of must be a *wrongful* act, both by the law "of this country and by the law of the country where it was "committed ; but it is not necessary that it should be the "subject of civil proceedings in the foreign country."

Rigby, L.J., applying the rule to the present case, laid down that "there is no doubt that an action for a libel "published abroad is maintainable here unless it is shewn "that the libel *was justified or excused* in the country where "it is published."

The Court followed the view apparently adopted by Wightman, J., Willes, J., and Blackburn, J., in the case of *Scott v. Seymour*, 1 H. & C. 219 ; of Willes, J., in *Phillips v. Eyre*, L.R. 6 Q.B. 1 ; and of the Judges of the Court of Appeal in the case of *The Moxham*, L.R. 1 P.D. 107, all of whom appear, when referring to the foreign law, to have advisedly used the terms "unjustifiable" and "wrongful" instead of "actionable." On the other hand Williams, J., in *Scott v. Seymour*, and the present Master of the Rolls in the case of the *Chartered Bank of India v. Netherlands, &c., Co.*, 10 Q.B.D. 521, seems to have taken a different view. In the latter case (p. 536) Lord Esher refers to the "well-known rule that for any tort committed in a foreign "country . . . an action of tort cannot be maintained "in this country unless the cause of action *would be a cause "of action in that country*, and also would be a cause of

"action in this country." Curiously enough this dictum does not appear to have been considered in the recent case, either in the arguments or judgments. It is to be observed that Professor Dicey (*Conflict of Laws*, p. 662) has construed the rule of law in the sense in which it has now been decided, though he says that "logically this conclusion is "difficult to defend, and there is a good deal to be said in "favour of the view apparently maintained by Lord Esher "and Mr. Justice Williams."

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#### Power of Appointment by Will.

A curious question arose in the case of *In re Bald*; *Bald v. Bald*, 66 L.J. Ch. 524; 76 L.T.R. 462. A testator, A., domiciled in Scotland, gave to B. an interest in the income of a settled fund, and also a general power of appointment over the corpus to the extent of £2,000. B. (presumably a domiciled Englishman, though this question was not actually decided), exercised this power by will and died insolvent. By Scotch law this appointment would not, as it would by English law, make the appointed property general assets for creditors. Byrne, J., held that "although the appointment was made by an Englishman and "by an English instrument, the law of Scotland" (*i.e.*, of the domicile of the original donor of the power) "governed the "case, and the property would go according to Scotch law."

The case is so shortly reported that the exact grounds of the decision are not quite apparent, but the conclusion arrived at seems not altogether satisfactory. If the power was effectually exercised at all (as seems to have been the case), the fund would appear to have become part of the donee's assets, the administration of which would ordinarily be a matter exclusively of English law—the *lex fori*. A fuller report might clear up the difficulty.

JOHN M. GOWER.

## VI.—NOTES ON RECENT CASES (ENGLISH).

**Foreshore Rights.**

“**T**HE ownership in the soil under navigable waters is different to the ownership over land.” “But we have the right of an ancient fishery in this part of the river.” “But fish do not go into the soil. I can never understand what difference ancient fishery rights make to questions of ownership.” “In the case of *Gann v. Three Fishermen of Whitstable* it was laid down that the right to anchor at pleasure in navigable water did not include the right to put down moorings. The case was decided by the House of Lords.” “Surely you do not suppose we want the authority of the House of Lords or that of the House of all the grandmothers in England to tell us that anchoring a vessel in the ordinary course of things is an incident to the right of navigation? All I can say, if such authority is necessary we shall next have an authority cited to enable us to hold that it is an incident to the enjoyment of life for a man to blow his nose.” This conversation took place between counsel in a case as to foreshore rights and the Master of the Rolls, the latter commencing the subject. The question was as to whether persons using navigable waters in a river have as against the owner of the soil, the right to put down permanent moorings. Certain yachtsmen, boat-owners and fishermen of the town of Leigh, in Essex, sought to restrain the defendant, a fish salesman and lessee of the Hadleigh Ray fishery off that town, from interfering with the moorings on the foreshore. It was contended by the plaintiffs that from time immemorial the fishermen and boat-owners at Leigh had moored their craft to moorings which they had put down on the foreshore. The defendant had taken a lease of the fishery, and subsequently

gave the plaintiffs notice that if they did not pay him a rent, he should prevent them from mooring at the spot in question, alleging it was within his fishery grounds. Compliance with defendant's claim was refused by plaintiff, and as defendant removed some of the moorings, this injunction was sought to restrain interference. The dispute went before the Divisional Court and there the plaintiffs obtained a verdict with an injunction, but, inasmuch, as the plaintiffs had failed to shew that the mooring ground was not within the defendant's fishery, the defendant was held to be entitled to costs on that part of the case. The defendant took the matter to the Court of Appeal, contending that the right claimed by the plaintiffs to anchor their boats was not incidental to that of ordinary navigation, and defendant, being a lessee from the lord of the manor, could cut away and remove permanent moorings. The Master of the Rolls pointed to the case of yachts at Cowes, where the owners were perfectly at liberty to put down moorings which they could come back to. The land there was vested in the Crown, and it could not be supposed that their right to do so came from any special grant. Counsel pointed out that at the time this case of *Attorney-General v. Wright* was being tried in the Divisional Court, a question of whether a right alleged to have been enjoyed by the public generally could exist at law, was being decided by Vice-Chancellor Chatterton in the Irish Court. The question there was whether the fact that the land about the Giants Causeway had been open for generations to tourists and others, who wandered about the locality in order to enjoy the scenery, gave by the prescription the public a right to continue to go there without let or hinderance, the property having been purchased by a company who desired to impose a toll. The Court held that no such right as was claimed on behalf of the public could exist at law. The respondents



in the present case submitted that this right had been enjoyed by all those who used this part of the river, either for business or pleasure from time immemorial, and that they had acquired that right either by a direct grant from the Crown, or by arrangement with a predecessor of the present owner of the soil. The conduct of the defendant in cutting adrift their boats and removing their moorings was unjustifiable. The particular part of the river was in ancient charters mentioned as belonging to the Port of London. From the earliest time the Crown had been very jealous of any interference with the right of the subject to anchor his vessel where he would. The *locus in quo*, said the Court in this matter, was a place in the navigable part in the lower Thames. The inhabitants of Leigh on behalf of themselves claimed the right not merely to drop anchor from time to time there, but to put down moorings to which they could return at will. The defendant was the owner under a license of the foreshore, which was covered with water at high tide, and he contended that the inhabitants had no right to fix anything to his soil to which they could moor their boats. He claimed the right to treat those who did so as trespassing, and that he was entitled to cut their boats adrift and seize as his property, to do with what he liked everything they had affixed to his land. It was, though, pointed out by the Court, that a right belonged to every Englishman to anchor his boat, anywhere that he wished in navigable waters. Why should this be cut down to that of merely dropping an anchor? The Court considered that a fisherman was entitled to keep his boats moored a little way from the beach if he so wished, and to return at leisure to his moorings. This prescriptive right, enjoyed by every Englishman to anchor his boat anywhere round the coast of England, was sufficient to justify the acts of the plaintiff complained of by the defendant. There was ample evidence on which it could be assumed that

they had this right by express grant from the Crown, or by arrangement with the former owners of the soil.

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#### **Knock-out Sales and Puffers.**

In November last the Government held a sale by auction of surplus stores at Woolwich Arsenal, and among the lots sold was one consisting of four cases of sweet spirit of nitre. Prior to the sale it was said to have been arranged between plaintiff and defendant that they should not bid against each other, that the defendant should purchase the goods, and that after the sale they should agree as to how it was to be disposed of. At the sale the goods were knocked down to the defendant for £5, and it was subsequently arranged that the defendant should sell the goods to plaintiff for £6. The value of the goods were stated to be £13 10s. The defendant failed to perform his contract, and the plaintiff brought the present action. At the trial the Deputy County Court Judge (Mr. Sills) held that the arrangement between the parties prior to the sale was a conspiracy to cheat the Government, and non-suited the plaintiff. The question for the Divisional Court was whether there had been a conspiracy, and whether the Deputy County Court Judge was wrong in non-suiting the plaintiff, and the Divisional Court held that there was nothing apparently illegal in what the parties did. The Government should have employed a "puffer" within certain limits. The case was one the Divisional Court considered ought to go back to the County Court Judge to be heard. The Deputy County Court Judge was wrong in his law, and, to enable him to come to a decision on the facts, he must hear the evidence. On the case going back to the Woolwich County Court, His Honour Judge Addison pointed out that it would be quite legitimate for persons attending a sale to agree amongst themselves not to bid against each other,

and to buy as cheaply as possible. That could not be called a "knock-out sale"; other persons could bid and buy as well. Fraud and conspiracy could not be advanced unless lay buyers were hustled about or intimidated by a ring. If the object of the conspiracy was to defraud the Government, then it was unlawful and fraudulent; that would be a "knock-out" sale in the strict meaning of the term, but in this case the plaintiff had made a reasonable contract with the defendant. The parties had arranged not to benefit people by a sort of mad competition, and it was quite clear they did not prevent the public from buying if they wished to do so. The case was a simple one and the contract was good. A "knock-out" sale was illegal, because conspiracy and fraud must be used in carrying it out. But here there had simply been an arrangement between a few men not to bid against each other. As judgment was in favour of the plaintiff, he came out of the affair (*Leopard v. Litoun*), as his counsel aptly phrased it, with clean hands.

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#### **Are Continuing Noises a Nuisance? A Case for Chambers.**

Some valuable suggestions fell from Mr. Justice Kekewich in the recent case of *Norton v. Mills*. A firm of mechanical instrument makers and music sellers frequently let their upper rooms for lessons in pianoforte playing and singing, and the plaintiffs alleged that a great nuisance was caused by this loud singing, as the pupils had often to sustain a high note of the scale, and this singing continued for several hours. The Divisional Court granted an injunction prohibiting the singing lessons and practice on the particular premises so as to cause annoyance or injury to the plaintiffs. The question then arose who was to pay the costs? This depended on whether there was a nuisance existing in June, 1896, when the writ was issued. If the

plaintiffs' witnesses were accurate there was a nuisance. Reference was made to the case of *Walter v. Selfe*, 4 De G. and Smale 215, which Mr. Justice Kekewich mentioned, to shew that he was bearing in view the limits of the law of nuisance. In that case said Vice-Chancellor Knight Bruce, "Both on principle and on authority the important point next for decision may properly, I conceive, be put thus: Ought this inconvenience to be considered in fact as more than fanciful, more than one of mere delicacy or fastidiousness, as an inconvenience materially interfering with the ordinary comfort, physically, of human existence, not merely according to elegant or dainty modes and habits of living, but according to plain and sober and simple notions amongst the English people?" With regard to the noise in the present case, which had been heard frequently, the nuisance was held to be proved. "Just conceive," said Mr. Justice Kekewich, "a *tenore robusto* endeavouring to teach his pupil to sing such a familiar song as 'Sound an Alarm' and to reach the well-known high note. If that went on frequently, and especially if pupils in singing their scales held on to the high note for half a minute, it was impossible for plaintiffs to attend to their business." Of course the Court will not interfere to restrain a temporary noise, but otherwise if there was a continuous noise. Certain gentlemen, it appears, went one day to arrive at the truth of the alleged nuisance, but Mr. Justice Kekewich thought—and this is where his valuable suggestion comes in—a more reasonable course could have been adopted. If an application had been made to him in Chambers for inspection, there would have been no difficulty in obtaining an order for procuring the independent evidence of someone, directed by the Court, to test what had been going on. If that had been done, probably there would not have been all this litigation. It might have been quite possible to make some mechanical alteration which would have prevented the

noise from reaching the plaintiffs' premises. Unfortunately, that course was not adopted. The noise seemed to be clearly proved, and to such an extent that a nuisance was occasioned. The injunction was limited to the singing only, restraining the defendants, their servants and agents from allowing singing lessons to be given or singing practice to go on at particular premises in such a manner as to cause annoyance or injury to the plaintiffs in their business as auctioneers and valuers.

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### **The Right to Fish and Profit à Prendre.**

The plaintiffs were grantees of the exclusive right of fishing in parts of the rivers Chess and Colne, and were trustees of the True Waltonian Society. They complained that the defendant, a railway contractor in connection with the Great Central Line to London had injuriously affected the water and the fish and spawning beds and sought an injunction and damages. The Divisional Court in this case of *Fitzgerald v. Firbank* did not grant the injunction as defendant had stopped his operations before trial, but considering that the trout were affected and the spawning beds also by the defendant's action, £150 damages were given. The case being taken to the Court of Appeal by defendant, some curious hair-splitting pleas were raised by him. One of the questions was, what was granted and what was the position of the grantees. The appellant's counsel averred that the grant did not include the right to carry away fish. No authority was adduced, however, in support of that contention, which was one that could not for a moment be sustained. In the old reports of Salkeld, p. 637, there was an authority that in the opinion of lawyers the grant of an exclusive right to fish included the right to carry away the fish hooked. The position of the plaintiffs was not that of mere licensees but they

had a legal right to what was called a *profit à prendre*. They had not merely an easement, and as such owners of a *profit à prendre* they might bring an action of trespass. The defendant had interfered with the plaintiffs' right of fishing by putting matters into the water which was injurious to the fishing and drove away the fish and injured the spawning beds, that was not causing what was called *damnum sine injuria*, an injury without any legal wrong, and the action was sustainable. The case appeared a somewhat unusual one. There was no precedent for what might be called an action for nuisance in respect of a right to fish. There was nothing in the defence raised, and therefore the decision of the Divisional Court stood with the damages claimed and the appeal was dismissed. The result of the decision is, therefore, that a grant of an exclusive right of fishing with rod and line will constitute the grantee the owner of a *profit à prendre*.

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#### **County Councils and Urban District Councils and Repair of Sea-walls.**

Under the Highway Acts it is never intended that the liability imposed upon a county to contribute towards the maintenance of main roads shall include a liability to do so in the case of an esplanade or sea-wall such as the one which formed the subject of the arbitration between the County Council of Kent and the Urban District Council of Sandgate. There the question was which council was liable to pay for the repair and maintenance of the Sandgate esplanade and the groynes. The arbitrator held that the County Council should pay a certain sum to the District Council for rebuilding, but held that the wall was not part of a main road. Here the promenade was built for the benefit of the inhabitants of this watering place and as an attraction to visitors, and was not a "highway" for the

use of the county generally. When the road was made a main road the sea had not encroached to the same extent as now, which rendered the question on whom lay the liability to repair damage done by storms, from time to time, a very serious one. The Court of Appeal held, therefore, that the local authority had no claim whatever against the County Council or those who happened to be on it, for any contribution towards the expenses that had been incurred in repairs. When, in 1883, the Justices of Kent dealt with the road and made an order declaring it to be a main road, did they mean to make the esplanade a part of the main road, and, if there was a highway and it required to be protected from the sea, could they build a sea-wall and put the expenses on the county? The Court of Appeal held that in neither case could they do so. The inhabitants were under no obligation to keep the sea from a highway, and, if without being under an obligation, they chose to do so for their own purposes, they could not throw the expense on the people. The district council could not charge against the county any part of the expenses which they sought to charge against them.

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#### **Furnace Slag Heap and Quarries.**

The Midland Railway Company owned a slag heap at Willenhall, called the "Willenhall Slag Quarry." Slag, as is well known, is the refuse from blast furnaces, produced in the manufacture of pig-iron. The heap had been lying on the ground for nearly 11 years, and occupied a space of 15 acres, its face being 300 yards long and its height 37 feet. In 1896 the railway company employed some men to loosen and pull down the slag with iron bars, and other men standing at the bottom of the heap were engaged in loading the slag into railway trucks for conveyance along the line to another place. At the place where the men

were working the face of the heap was 37 feet in height from the natural surface of the ground, the first 30 feet from the top being about 20 degrees out of the perpendicular. The mining inspector for the district contended that this heap was a mine and the slag a mineral within the meaning of the Quarries Act, 1894, and that a heap of such slag of large extent was a quarry under the Act. The inspector accordingly laid an information against the railway company before the justices of Staffordshire at Willenhall, claiming that the company had committed an offence against the Metalliferous Mines Regulation Act, 1872, as applied to quarries by the Quarries Act, 1894, by failing to cause an abstract of the Act, with the name and address of the inspector of the district, and the name of the owner appended thereto, to be posted in legible character in some conspicuous place at the quarry. The justices, however, dismissed the information holding the slag heap did not come under the condition suggested by the inspector. The inspector took the case, *Scott v. Midland Railway Company*, to the Queen's Bench Division, but Mr. Justice Hawkins held that the justices were right and dismissed the appeal. The inspector's view was that in such a case as this the dangers from material were present, and it was against such dangers that the Acts provided safeguards. Of course, if wood were stacked, the same danger to men moving it was created, or of workmen pulling down a brick house. To hold that a slag heap was a mine and the slag a mineral, was, it was admitted by the inspector, stretching the ordinary meaning of words, and in that the Court evidently agreed by its dismissing the appeal.

T. F. UTTLEY.

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## Books Received.

*The Publications of the Selden Society.* Select Pleas in the Court of Admiralty. Vol. II., A.D. 1547—1602. Bernard Quaritch, London, 1897. Price £1 8s.

*Outline of the Law of Libel.* By W. Blake Odgers, Q.C. Macmillan and Co., Ltd., London, 1897. Price 3s. 6d.

*Encyclopædia of the Laws of England.* Under the General Editorship of A. Wood Renton, M.A., LL.B. Vol. II. Sweet & Maxwell, Ltd., London; and William Green & Sons, Edinburgh, 1897. Price £1.

*International Law Directory*, 1897. Edited and compiled by Philip Graburn Kime. Bowden, Hudson & Co., London, 1897. Price 7s. 6d.

*Monopolies by Patents.* By J. W. Gordon. Stevens & Sons, Ltd., London, 1897. Price 18s.

*Robinson on Gavelkind.* Fifth Edition. By Charles I. Elton, Q.C., and Herbert J. H. Mackay, LL.B. Butterworth & Co., London, 1897. Price 15s.

*Oke's Game Laws.* Fourth Edition. By J. W. Willis Bund, M.A., LL.B. Butterworth & Co., London, 1897. Price 14s.

*The County Courts Act*, 1888. By Edwin Shuttleworth. John Smith & Co., London, 1897. Price 5s.

*Four Lectures on the Law of Employers' Liability at Home and Abroad.* By Augustine Birrell, Q.C., M.P. Macmillan & Co., Ltd., London, 1897. Price 2s. 6d.

*Roman Law Examination Test.* By W. Addington Willis, LL.B. Butterworth & Co., London, 1897. Price 6s.

**"The Pacific Blockade of Crete."**—Mr. Th. Baty, referring to the note by Dr. Gover on this subject, at pp. 184-5, writes to us:—Dr. Gover thinks that we who assert that pacific blockade is war merely object to the name. The objection lies a great deal deeper than that. A power which initiates a blockade and calls it "pacific," will consider itself to be at peace. It will claim all the advantages of being at peace, and this is what it is submitted should be impossible. These advantages are neither trivial nor few. They comprise relief from constitutional embarrassments, exemption from the reproach of breaking the peace of the world, permission to enjoy neutral assistance, and freedom from the fear of military surprise. And, no doubt, this does not exhaust the list of conveniences.

**"A Question of Legitimacy."**—At p. 173, line 24, read "*leur enfant, leur mariage, en quelque lieu.*" And at p. 174, for § 192 read § 55.

## Reviews.

*Select Pleas in the Court of Admiralty.* Vol. II., A.D. 1547—1602. Edited for the Selden Society by REGINALD G. MARSDEN. London: Bernard Quaritch. 1897.

We reviewed the first volume of this interesting compilation in our February Number, 1896, and we are pleased to see the compilation continued in the volume before us. It begins with the history of the Court of Admiralty, and follows with an account of the Admiralty jurisdiction of the seaports—wrecks, droits and salvage; also of prohibitions, early references to the Admiralty Court, summary of cases litigated in the Admiralty 1528—1602, a series of exemplifications and examinations, and some remarks on the records subsequent to the reign of Elizabeth.

Notwithstanding the determined attack upon the Admiralty Court by the Common Law judges, the business transacted by it during the seventeenth century was very considerable. Its character is very similar to that of the sixteenth century. Forty-five prohibitions were issued during the first eight years of the reign of James I. In the view of the Common Law judges, the Admiralty had no jurisdiction in most of the matters with which it had hitherto dealt. Collision in a county, wreck (or salvage), charter-parties, bills of lading, bottomry, wages, piracy and even prize were all held to be matters for prohibition. Nevertheless the Court, whether by right or by sufferance, went on very much as before until the Restoration. During the Commonwealth, its business seems even to have increased, owing, probably, to an Ordinance of Parliament which declared or gave the jurisdiction which it claimed. With the Restoration, the attack of the Common lawyers upon the Court began afresh, encouraged by the disfavour which then attached to all the doings of the Commonwealth, including the recent settlement of the Admiralty jurisdiction. The efforts of Sir Leoline Jenkins to induce Parliament to confirm that settlement, and their final failure, are historical; ample references to them occur in the Admiralty Court records. The decadence of the Court dates from this period. Admiralty lawyers then gave up a hopeless struggle with the Common Law judges, and the business of the

Court rapidly declined. During the eighteenth and early part of the nineteenth century, the business consisted principally of piracy, salvage, collision, wages and bottomry suits, but the amount of the business was trifling, compared with that of former years; and the jurisdiction, even in these matters, was questioned by occasional prohibitions.

Notwithstanding one or two prohibitions in matters of prize, the jurisdiction upon this subject was never seriously contested, and it was finally recognized towards the end of the eighteenth century. The separation of prize from instance business appears to have been made shortly after the Restoration, partly in consequence of conflicting claims of Charles II. and the Duke of York, the Admiral, to certain droits. From this time the instance and prize records are kept distinct.

Extracts from the records of the High Court of Admiralty, together with their translations, take up the greater part of the volume. We must congratulate the editor on the able manner in which he has designed and carried out this laborious task, which cannot fail to cast a new vista on the proceedings of our ancient Admiralty.

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*Robinson on Gavelkind: the Common Law of Kent, with additions relating to Borough-English and similar Customs.* By CHARLES I. ELTON, of Lincoln's Inn, Q.C., and HERBERT J. H. MACKAY, LL.B., of the Middle Temple, Barrister-at-Law. Fifth Edition. London: Butterworth & Co. 1897.

In some 250 pages a great deal of information is contained concerning the Common Law of Kent. All lands whatsoever lying in the county of Kent are presumed to be of the nature of gavelkind till the contrary be made to appear. Lord Hale says that such presumption is not allowed in any other county, but the person claiming the benefit will be bound to prove the custom. The descent of lands in Kentish gavelkind has long been settled as being among all the sons or their representatives, and in default among all the daughters or their representatives, and so in the case of the males and females in other degrees. The history of this peculiar tenure is a sealed book to many lawyers; hence it is with pleasure that we welcome the new edition of this work, which is well brought down to date, and will be found very reliable by those practitioners who have to deal with the matters in question.

*Oke's Game Laws: containing the whole Law as to Wild Birds throughout the United Kingdom, systematically arranged with the Acts, Decisions, Notes, and Forms.* By J. W. WILLIS BUND, M.A., LL.B., of Lincoln's Inn, Barrister-at-Law. Fourth Edition. London: Butterworth & Co. 1897.

It is now sixteen years since the last edition of this book was published, and one of the most important features has been the legislation for the protection of wild birds. By the Wild Birds Act, 1896 (59 and 60 Vict., c. 56), a County Council may, with the approval of the Secretary of State, prohibit the killing of, or taking, any kind of wild bird at any time. This legislation is most beneficent to the interests of our country, and contrasts very favourably with the barbarous practices of Italy, where a traveller may pass over the open country or through woods and orchards, for many miles, without hearing the chirrup of any bird. The editor has fully maintained the repute of Mr. Oke, and has brought the book down to date with the latest Acts and cases.

*Encyclopædia of the Laws of England, being a new Abridgement of the most Eminent Legal Authorities.* Under the general editorship of A. WOOD RENTON, M.A., LL.B., of Gray's Inn, and of the Oxford Circuit, Barrister-at-Law. Vol. II. London: Sweet and Maxwell, Limited. Edinburgh: William Green and Sons. 1897.

This, the second volume of a very useful compendium, continues to maintain its own. We notice an interesting article on "Trial at Bar" from the pen of Mr. F. H. Short, followed by a uselessly long dissertation on "Barbed Wire" by Mr. James Weir; an article perhaps appropriate to the name of the writer, but which might have been condensed in a few lines. Mr. Manson subscribes an article on how to "Become a Bankrupt." We should think that the answer might fitly be found in the picture "Vice Gambling with Death." The phraseology of the title is unfortunate, although the article itself is well compiled. Mr. Barclay has contributed an interesting article on "Blockade" and on kindred subjects, although we notice at p. 183 a misprint, which turns *Halleck's International Law* into *Harleck*. Mr. Craies again suffers under the obligation of dealing in unsavoury subjects; while "Candidate," "Canvassing," and "Capital Punishment" from the pen of Mr. G. H. B. Kenrick are particularly happy, and probably the best articles in the volume.

*An Outline of the Law of Libel. Six Lectures delivered in the Middle Temple Hall during Michaelmas Term, 1896.* By W. BLAKE ODGERS, of the Middle Temple, M.A., LL.D., Q.C. London: Macmillan & Co., Limited. 1897.

These Lectures, having been written and delivered verbally, would best have been buried in oblivion, and we think it unfortunate that they have been printed and published as an "Outline of the law of libel." They certainly are not to be relied on as containing an accurate, or anything approaching an accurate, outline of the law of libel, and they are besides, in many respects, misleading. They are chiefly gossiping discussions, speculative and argumentative, interlarded here and there with some trumpery case, in which the lecturer himself was concerned as counsel on one side or the other; for an instance of which see pp. 102-4. At p. 23 the author states: "It is very doubtful whether a Corporation can sue for words which merely affect its dignity or honour." This is misleading, it being entirely free from doubt that a Corporation *cannot* sue in such a case; it was expressly decided in the very case quoted by Mr. Odgers (that of the *Mayor and Corporation of Manchester v. Williams*) that there is no principle of law on which such an action could be founded.

It seems an unusual and vulgar mode of authorship of a law book, to state an imaginary case, pp. 33-4, and then to offer to argue it when it arises "in the Court of Appeal on either side." Again, his illustrations are as unsound as his law; at p. 85, he states another imaginary case; "suppose," he says, "a newspaper published a libel on an 'eminent Q.C.' (without naming him): Can all eminent Q.C. sue, or only one?" Mr. Odgers says he should advise any friend of his so libelled to be the first Q.C. to sue. We have no hesitation in saying that no "eminent Q.C." would act upon such advice. If he did, woe betide him! In the first place his opponent would at once traverse and deny that the plaintiff was an "eminent Q.C."; an unpleasant issue would thus be raised at the very outset, which plaintiff would find no little difficulty in meeting; and if he failed in so doing his action would fail, however gross the libel might be. Both the illustration and the advice given by Mr. Odgers are, to say the least, unfortunate.

But these are not the worst features of the book, at pp. 111-112, referring to "Malice," the author says that our older Judges and text-writers state the law thus: "Malice is the gist"

of the action" of libel. Again, he says, "these venerable writers start by stating something which is not the fact;" and "these worthies *will* have it that malice is the gist of the action." Now these are misrepresentations, as well as reflections upon some of our ablest Judges and text-writers. In no judgment, nor in any text-book recognised as an authority upon the law of libel, is it stated in the way Mr. Odgers puts it. Mr. Odgers refuses to recognise the authorities as to the distinction between *malice-in-fact* and implied malice, or *malice-in-law*; though expressly laid down in the well-known leading case on the subject—*Bromage v. Prosser*, 4 B. & C. 247, and which distinction runs through the whole current of subsequent authorities. At p. 115 Mr. Odgers says he was taught "that there must be *et damnum et injuria* in every action of tort." One might be curious to inquire in what school he was so taught. We ourselves know of no law text-book containing such a maxim. We are all familiar with the maxims *damnum sine injuriâ*, *damnum absque injuriâ*, and *injuria sine damno*, all of which are clearly and elaborately discussed and explained in most of our elementary treatises on the law of torts; but this is the first occasion on which we have ever seen those maxims perverted into the quaint proposition "*et damnum et injuria*." If space and time permitted there are many other unreliable statements we might point out. Suffice it to say that in our opinion this book is not a trustworthy guide either for the student, the layman, or the lawyer.

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*Four Lectures on the Law of Employers' Liability at Home and Abroad.* By AUGUSTINE BIRRELL, Q.C., M.P., Quain Professor of Law at University College. London: Macmillan & Co., Limited. 1897.

Mr. Birrell, in the first of the four lectures comprised in the little volume before us, discusses with remarkable perspicuity and ability the doctrine of common employment as applicable to the liability of employers, shewing its origin in the Law Courts, its application, its effect and the objections to it. He then, in the next lecture, refers briefly to the liability of employers under the Common law, for negligence and breach of duty, and the circumstances which led to the passing of the "Employers' Liability Act, 1880"; the subsequent working of that Act, and its shortcomings. In the third lecture follows a learned and interesting discussion on "Foreign Law and

Systems of Insurance" with reference to the Liability of Employers. And the fourth lecture is devoted to the new Bill on the subject, which is so shortly to become law. In this lecture the chief features of the new Bill, and the leading arguments, *pro* and *con*, that were used in the House of Commons are stated with a terseness that could not be excelled; and the advantages and disadvantages of the Bill are clearly and ably explained. The little volume is one which both employers and employed may read with interest, instruction, and advantage.

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*Monopolies by Patents, and the Statutable Remedies available to the Public.* By J. W. GORDON, of the Middle Temple, Barrister-at-Law. London: Stevens & Sons, Ltd. 1897.

This work commences with a brief summary of the history of the Patent law, which may be taken to have begun in 1600; it sets out the Statute of Monopolies, and discusses it, bringing us down to 46 and 47 Vict., c. 57, the Patents Act, 1883. The work is very interesting, being not only of legal, but also of historical learning. In the Appendices we find a treatise on the "Book of Bounty," with a facsimile of "By the King, a Declaration of His Majesty's Royal Pleasure In What Sort He Thinketh Fit to Enlarge, Or Reserve Himself In Matter Of Bountie." It will amply repay attentive perusal.

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*The Roman Law Examination Test for Bar and University: Questions and Answers.* By W. ADDINGTON WILLIS, LL.B., of the Inner Temple, Barrister-at-Law. London: Butterworth & Co. 1897.

This little treatise which is intended to assist the student about to present himself for examination in Roman Law, preparatory to being called to the Bar, consists of questions, all of which have been set in examinations, and contain answers by the writer to the same. The book will prove a "golden way" to students desirous of passing the Roman bridge, even if that bridge be kept by Horatius himself.

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*The County Courts Act, 1888, with Notes, Cases, Points of Practice and Chapters on Receiver, Injunction and Discovery in Aid of Execution.* By EDWIN SHUTTLEWORTH, Chief Clerk of the Birkenhead County Court. London: John Smith and Co. 1897.

This book consists of the above Act with notes, a list of other Acts authorizing proceedings in County Courts, a list of Court

fees, and the Acts mentioned in the title. It is likely to prove a handy book of reference for officials connected with the County Court, it being brief and well indexed.

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*Kime's International Law Directory, containing an adequate representation of selected legal practitioners in most of the principal towns throughout the Civilized World.* By PHILIP GRABURN KIME. London: Bowden, Hudson, and Co. 1897.

This directory is bound to be of considerable use, both to the legal profession and to the public at large, in these days when travels are multiplied and commercial intercourse is cosmopolitan. It contains *inter alia* an excellent telegraphic code.

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*The Barrister.* Toronto. January, 1897.

What strikes—and, if he sees it for the first time, amazes—the English reader in this and other Canadian professional journals is the competitive advertising of the legal profession. Both *The Barrister* and the *Canada Law Journal* positively teem with advertisements of which the following is a fair type:—“P. W. C. (formerly with D. and H., Barristers, . . .), Attorney and Counsellor-at-Law, Commissioner for the Provinces. T. Building, Boston, Mass.

“Affidavits and other evidence for use in Provincial Courts carefully prepared. Special attention given to all Collections, Commercial Litigation, Probate and Equity Matters. (Reference, Hon. L. D. . . .).”

May it be long before we find such things in our own *Law Times*!

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*La Giustizia Penale, Rivista Critica Settimanale di Dottrina Giurisprudenza e Legislazione.* Rome. January and February, 1897.

The names of Beccaria and Lombroso are sufficient to prove the high place which Italian writers have taken among authorities on penal law. This periodical is a combination of reported decisions, with leading articles on the subject treated. Both will be found very interesting by an English reader, and will introduce him to views, especially on the question of evidence, very far removed from those that are in favour in English practice. For instance, the gist of one decision is as



follows (p. 202):—The President has jurisdiction to forbid a conference between the accused and his counsel until the former has been interrogated by the President.

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*La Giustizia Penale.* Rome. March to July, 1897.

These numbers contain interesting reports of criminal cases in the Italian Courts. The jury is very much in evidence; the effect produced by many of the cases on the mind of an English lawyer is that trial by jury in Italy is itself on its trial, and one of the editors takes a very strong view in favour of its abolition.

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*Judgment of His Honour the Chief Justice in the Case of Brown v. Leyds, Delivered 22nd January, 1897.* Pretoria: John Keith.

This is a reprint (revised by Chief Justice Kotzé himself) of the famous judgment deciding that the *Grondwet* of the South African Republic cannot be altered by a resolution of the Second Volksraad. The judgment will well repay perusal. It raises and disposes of numerous interesting questions as to the conflict of laws with the constitution.

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*The Harvard Law Review.* Cambridge, Mass. March to June, 1897.

The articles which will be found most interesting on this side of the Atlantic will probably be those on "A Movement in English Legal Education" and "The Incidence of Rent," the latter by Mr. T. Cyprian Williams. There are notes of some curious cases, especially one raising the constitutionality of a provision in the charter of Kansas City inflicting a fine of two and a-half dollars on every qualified voter who failed to vote. On a delinquent voter objecting to pay the fine, the matter came before the Courts, and the provision was declared unconstitutional.

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*The American Law Register and Review.* Philadelphia. January to June, 1897.

This is a publication somewhat in the nature of *The Harvard Law Review*, and contains an interesting summary of recent English and American cases grouped in each number under the title "Progress of the Law." Here, as in the Harvard publication, constitutionality fills a large space. An instance is

*People v. Warren*, a New York case mentioned on p. 188. There it was held that a statute making it a crime for a contractor to employ an alien as a labourer on public works violates the treaty between the United States and Italy, which provides that resident Italians shall enjoy the same rights and privileges as citizens of the United States.

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*The Law and Privileges relating to the Attorney-General and the Solicitor-General of England, with a History from the Earliest Periods, and a Series of King's Attorneys and Attorney's and Solicitor's General from the Reign of Henry III. to the 60th of Queen Victoria.* By JAMES WILLIAM NORTON KYSHE, of Lincoln's Inn, Barrister-at-Law, Registrar of the Supreme Court of Hong Kong. London: Stevens and Haynes. 1897.

The origin, development and incidents of the offices of the two leading law offices of the Crown are known in a dim and fragmentary fashion to most members of the legal profession, though few are aware of the number of decisions there have been upon their privileges and prerogatives. The work of Mr. Kyshe not only imparts instruction on this and other heads, but teems with interest in regard to every matter directly or indirectly concerning these prominent posts. The first part is historical; and we learn from it that much doubt and uncertainty exists as to who was the first Attorney-General, and that the office did not become a fixed institution till the reign of Edward IV., though before that there were many *Attornati Regis*. The first Solicitor-General was appointed in the same reign, in the person of one, Richard Fowler, at a salary of £10 a year. They do not appear to have had seats in the House of Commons till much later. The second portion of the work deals with their privileges, peculiarities, and disadvantages, the last of which appear chiefly to have, in former days, consisted in being brought into unpopularity and odium, through having to be the agents of the Crown in enforcing its exactions upon the nation. Indeed the work is replete with citations from reports of cases in State and other prosecutions; and the coarseness and vituperative nature of the language frequently occurring in the mouth of the Sovereign's legal adviser would astonish us if used nowadays. The last portion of the work deals with the "right of reply," namely, having the last word in criminal prosecutions, which,

though for long past firmly established in the Attorney-General personally, has been the subject of conflicting decision as to its extension to the Solicitor-General and ordinary counsel when representing the Crown—though there is little doubt but that at the present day the Solicitor-General has an equal claim to it, yet the tendency of judicial decisions is to narrow it as much as possible. Mr. Kyshe notices that in 1891 it was decided in the Supreme Court of the Straits Settlements that the privilege extends to the Attorney-General of a Crown Colony, though not to the Attorney-General of a County Palatine, the reason doubtless being that the latter does not represent the Crown but the county.

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Among other periodicals we notice : *The Chicago Legal News* ; *The Law Book News*, of St. Paul, Minn. ; *The National Corporation Reporter*, of Chicago ; *The Canadian Law Times* ; *The Western Law Times*, of Canada ; *The Madras Law Journal* ; *The Law Times*, London ; *The Law Journal*, London ; *Bulletin Mensuel de la Société de Législation Comparée* ; *Annuaire de Législation Française* ; *Annuaire de Législation Etrangère*, Paris ; *La Revue Générale* ; *Revue Bibliographique Belge* ; *Case and Comment*, Rochester, N.Y. ; *American Law Review* ; *University Law Review* ; *Canada Law Journal* ; *Journal du Droit International Privé et de la Jurisprudence Comparée*, Nos. I.-VI. (Paris, 1897).

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# Quarterly Digest

OF

## ALL REPORTED CASES

IN THE

## Law Times and Law Reports

FOR JULY, AUGUST, AND SEPTEMBER, 1897.

By THOMAS J. BARNES, of the Middle Temple,  
Barrister-at-Law.

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### D I G E S T .

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Where a case has already been given in the Digest for a preceding quarter, the additional report is given after the name of the case, with reference to the volume of the Digest in which it first appeared, the thick number being the number of the volume.

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#### Administration :—

- (i.) **C. D.**—*Administration Action—Claim Disallowed—Costs.*—An administrator is entitled to costs in an administration action, even though the action was caused by his own claim subsequently disallowed.—*In re Jones ; Christmas v. Jones*, L.R. [1897] 2 Ch. 190.

#### Adulteration :—

- (ii.) **Q. B. D.**—*Milk—Costs against Magistrates—Sale of Food and Drugs Act, 1875, s. 6.*—An officer who required to be served with new milk was supplied with skim milk, but was charged only at the usual rate for skim milk. The justices before whom the vendor was charged under sect. 6 dismissed the complaint ; but the case was sent back to them to convict, and, as they appeared in the appeal, costs were given against them.—*Heywood v. Whitehead*, 76 L.T. 781.
- (iii.) **Q. B. D.**—*Food—False Warranty—Sale of Food and Drugs Act, 1875 (38 & 39 Vict., c. 63), s. 27.*—To procure the conviction of a person under sect. 27 of the Act for giving a written false warranty of an article of food, it is necessary to shew that the warranty was false to his knowledge.—*Derbyshire v. Houlston*, L.R. [1897] 1 Q.B. 772 ; 76 L.T. 624.

#### Appropriation :—

- (iv.) **H. L.**—*Appropriation of Payments—Rule in Clayton's Case (1 Mer. 572).*—In an account between parties the circumstances of the case may be considered in appropriating payments, notwithstanding the rule in

Clayton's case that appropriation is regulated by the order in which the receipts and payments take place. *See also* 20, p. 55 (vii.).—*Cory & Co. v. Owners of ss. Mecca*, L.R. [1897] A.C. 286; 76 L.T. 579.

### Apportionment:—

- (i.) **C. A.**—*Annuity Payable in Advance—Separation Deed—Partial Failure of Consideration—Apportionment Act, 1870* (33 & 34 Vict., c. 35), ss. 2, 7.—By a separation deed a husband agreed to pay the wife a sum of money half-yearly in advance. He died shortly after one of the payments had been made, and on a claim by his executor for the return of an apportioned part, it was *held* that the payments were not apportionable and no part could be recovered.—*Trevalion v. Anderton*, 76 L.T. 642.

### Arbitration:—

- (ii.) **C. A.**—*Stay of Action—Arbitration Act, 1889* (52 & 53 Vict., c. 49), s. 4.—The plaintiff contracted to serve the defendants for a fixed period, and it was agreed that he might be dismissed for misconduct, and that any dispute as to the rights and liabilities of the parties should be referred to arbitration. The defendants dismissed the plaintiff for alleged misconduct, and he brought an action for wrongful dismissal. *Held*, that as the defendants were willing to refer the whole difference, the dispute should go to arbitration and the action should be stayed. *Davis v. Starr* (L.R. 41 Ch. Div. 242; 60 L.T. 797) distinguished.—*Renshaw v. The Queen Anne Residential Mansions and Hotel Co.*, L.R. [1897] 1 Q.B. 662; 76 L.T. 611.

### Bankruptcy:—

- (iii.) **C. A.**—*Act of Bankruptcy—Deed of Arrangement—Proof—Deed of Arrangement Act, 1887*, ss. 6 & 11.—An office copy is, under sect. 11 of the Act, proof of the execution of the registered deed by the debtor on the day appearing in the copy. *See* 22, p. 92 (i.).—*In re Slater*; *c. p. Slater*, 76 L.T. 704.
- (iv.) **C. A.**—*Revocable Mandate—Fraudulent Preference—Bankruptcy Act, 1883*, s. 48.—Decision of Court below (22, p. 90 (v.)) affirmed. The Court also refused to have read answers given by the bankrupt upon his public examination, and *held* on a point raised on appeal that the deposit, by the bankrupt shortly before the receiving order and without communication to the *cestuis que* trust, in a box which remained under his control, of share certificates with a memorandum that they were so deposited as security for sums due by him to the trust estate, was a valid appropriation (following *Middleton v. Pollock*, 2 Ch. Div. 104).—*The Trustees of New, Prince and Garrard v. Hunting and Others*, L.R. [1897] 2 Q.B. 19; 76 L.T. 742. *See* 22, p. 50 (v.)
- (v.) **Q. B.**—*Payment of Overdue Acceptance—Fraudulent Preference—Bankruptcy Act, 1883*, s. 48.—The payment of an overdue acceptance, which, at the request of the acceptor, was not presented at maturity, may be a fraudulent preference within sect. 48 of the Bankruptcy Act, and if the trustee in bankruptcy proves that the debtor was insolvent at the time of payment, the onus of proof that there was no preference is on the party supporting the payment.—*In re Eaton & Co*; *c. p. Viney*, L.R. [1897] 2 Q.B. 16.
- (vi.) **Q. B. D.**—*Bill of Sale—Trade Goods—"Order and Disposition"—Bills of Sale Act, 1878—Amendment Act, 1882*, s. 7.—*Bankruptcy Act, 1883*, s. 44.—There is nothing in the Bills of Sale Act, 1882, to exclude the operation of sect. 44 of the Bankruptcy Act, 1883, and the possession

by a bankrupt as reputed owner of trade goods, which he has assigned by bill of sale, is possession by him with the consent of the owner.—*In re Ginger*; *e. p. The London and Universal Bank, Limited*, 76 L.T. 808.

- (i.) **Q. B. D.**—*Discount—Bankruptcy Act, 1883, Sched. II., r. 8.*—Brewers had been in the habit of allowing to a beer retailer 20 per cent. off charges on settlement without adhering to a notice on the invoices that no discount would be allowed unless the accounts were settled within three months. The beer retailer became bankrupt when his account with the brewers was more than three months overdue, and it was held that they were only entitled to dividends on the amount of their claim, less 20 per cent.—*Chambers & Co. v. Gunstone and Others*, 76 L.T. 780.

### Bill of Sale:—

- (ii.) **C. A.**—“*Plant brought upon a Place*”—*Bill of Sale Act, 1878, s. 5—Amendment Act, 1882, ss. 4, 6, sub-s. 2.*—Decision of Court below (22, p. 57 (ii.)) affirmed.—*The London and Eastern Counties Loan and Discount Co., Limited v. Creasey*, L.R. [1897] 1 Q.B. 768; 76 L.T. 612.

### Building Society:—

- (iii.) **Q. B. D.**—*Income Tax on Interest Paid by Borrowers—Income Tax Acts, 1842 (5 & 6 Vict., c. 35), s. 60, sched. A., r. 4 (10), ss. 100, 102, 1853 (16 & 17 Vict., c. 34), s. 2, sched. D.*—The excess of interest paid by borrowers of a building society over the interest allowed to investors and depositors is, after payment of expenses, subject to income tax in the hands of the society as “interest of money, annuities, and other annual payments.”—*The Leeds Permanent Benefit Building Society v. Malladaine*, 76 L.T. 650.

### Certiorari:—

- (iv.) **Q. B. D.**—*Company of Thames Watermen—Licence—Watermen's and Lightermen's Amendment Act, 1859 (22 & 23 C. cxxxiii.), s. 56.*—Certiorari will not lie to remove an order of the Watermen's Company under sect. 56 of the local Act, granting a licence to act as a waterman.—*The Queen v. The Court of the Co. of Watermen and Lightermen of the River Thames*, L.R. [1897] 1 Q.B. 659.

### Charity:—

- (v.) **C. D.**—*Non-Ecclesiastical—Appointment of Trustees by Parish Council—Local Government Act, 1894, ss. 14 (sub-s. 2), 75 (sub-s. 2).*—Money was left to churchwardens of a parish for benefactions to poor persons therein with preference to those who were regular in attendance at church. Held, confirming the decision of the Charity Commissioners, that this was not an ecclesiastical charity within sect. 75 (sub-s. 2) of the Local Government Act, 1894, and that an appointment by the parish council of trustees to take the place of the churchwardens was valid.—*In re Ross's Charity*, 77 L.T. 80.

### Cheque:—

- (vi.) **C. A.**—*Loss of Cheque in Post.*—Without request by the plaintiff the defendants were in the habit of employing the post as the means of sending to him cheques in payment of goods and the cheques were accompanied by a form of receipt, which the plaintiff was in the habit of signing and returning. Held, that under these circumstances the loss of a cheque in the post did not fall on the plaintiff.—*Pennington v. Crossley & Son*, 77 L.T. 48.

**Colonial Law :—**

- (i.) **P. C.**—*New South Wales*—Act 11 Vict., No. 4, s. 7—*Sale of Mortgaged Stock without Consent of Mortgagee—Intent to Defraud.*—By the above Act it is a misdemeanour for the mortgagor of sheep and cattle to dispose of them without the written consent of the mortgagee. *Held*, that absence of a written consent is reasonable and probable cause for making a charge under the section, and that proof of intention to defraud is not necessary.—*Bank of New South Wales v. Piper*, L.R. [1897] A.C. 383; 76 L.T. 573.

**Company :—**

- (ii.) **C. D.**—*Order Appointing Receiver—Winding-up—Companies Act, 1862, ss. 87 & 163—Judicature Act, 1875, s. 10.*—Before an order appointing a receiver of a company's interest in a ship and freight had been acted on, a winding-up order was made against the company. *Held*, that the receiving order did not place the creditor in the position of a secured creditor, and that in the absence of special circumstances, the Court ought not to allow the order to be further proceeded with.—*Croshaw v. Lyndhurst Ship Co.*, L.R. [1897] 2 Ch. 154; 76 L.T. 558.
- (iii.) **C. D.**—*English Company Trading in Australia—Guaranteed Preference Shares—Colonial Tax on Interest—Liability.*—A company established in England to trade in Australia created preference shares with a guaranteed rate of interest. *Held*, that a tax charged in the colony on this interest was payable by the company and not by the individual holder of preference shares domiciled out of the colony.—*Spiller v. Turner*, L.R. [1897] 1 Ch. 911; 76 L.T. 622.
- (iv.) **C. D.**—*Claim for Interest on Debenture Stock—Statutes of Limitations, 21 Jac. 1, c. 16; 3 & 4 Wm. IV., c. 27—Companies Clauses Act, 1863, ss. 22, 27.*—In 1863 by a scheme of arrangement with its creditors, which incorporated sect. 27 of the Companies Clauses Act, a company issued debenture stock. A warrant issued for interest to 31st December, 1884, was never presented for payment. In 1896 an Act was passed transferring the undertaking of the company to another company. The question arose whether the claim on the unpresented warrant was barred. *Held*, that the issue of the warrant was not satisfaction of the right of action for the interest, and that the right of action being statutory came within 3 & 4 Wm. IV., c. 27, and therefore was not barred.—*In re Cornwall Minerals Railway Co.*, L.R. [1897] 2 Ch. 74; 76 L.T. 832.
- (v.) **C. D.**—*Winding-up—Legal Proceedings by Liquidator—Sanction of Court or Committee of Inspection—Companies (Winding-up) Act, 1890, s. 12, sub-ss. 1, 4.*—An order of the Court directing a liquidator to take all necessary proceedings to enforce a call of unpaid capital, will not authorise him to employ a solicitor and commence actions against contributories without obtaining the sanction of the Court or of the Committee of Inspection under sect. 12 of the Companies (Winding-up) Act, 1890.—*In re London Metallurgical Co., Limited*, L.R. [1897] 2 Ch. 262; 76 L.T. 829.
- (vi.) **C. A.**—*Winding-up—Issue of Fully Paid-up Shares—Consideration Companies Act, 1867, s. 25.*—The agreement in writing for the issue of paid-up shares which the 25th sect. of the Companies Act, 1867, requires to be registered, must disclose the consideration even if the document be under seal. It is not a sufficient disclosure to say in the registered document that the paid-up shares are to be allotted for the consideration mentioned in another agreement of a certain date, which is not registered.—*In re The Kharashkoma Exploring and Prospecting Syndicate, Limited; Pyke and Gibson's Case*, 77 L.T. 82.

- (i.) **C. D.**—*Reduction of Capital*.—The Court has power to confirm a resolution for a reduction of capital, though the effect of the resolution is to alter the voting powers.—*In re James Colmer, Limited*, L.R. [1897] 1 Ch. 524.

**Copyright:—**

- (ii.) **C. D.**—*Racing News*.—Where, by the expenditure of labour and money, information previously published at a distant place is collected and transmitted to certain persons for reward and under restrictive conditions, it is a valuable property in the hands of the person collecting it, and an injunction may be granted to prevent unauthorised persons from publishing it.—*The Exchange Telegraph Co., Limited v. The Central News, Limited, and the Column Printing Telegraph Syndicate, Limited*, L.R. [1897] 2 Ch. 48; 76 L.T. 591.

**Corporation:—**

- (iii.) **C. A.**—*Association of Nurses—Alleged Libel in Association's Journal—Action against Editor—Defence by Association—Ultra Vires*.—In consequence of an article inserted by an incorporated association of nurses in a paper, of which they were proprietors, an action for libel was brought against the editor. *Held*, that it was not a misapplication of the funds of the association for the association to defend the action.—*Breay v. Royal British Nurses' Association*, L.R. [1897] 2 Ch. 272; 76 L.T. 735.

**County Court:—**

- (iv.) **Q. B. D.**—*Execution—Distraint—Fees—County Court Act, 1888* (51 & 52 Vict., c. 43), ss. 154, 160.—Distress for rent and an execution under sect. 160 of the County Court Act enforced against the same person may be separate proceedings, in each of which the high bailiff is entitled to poundage.—*In re Broster; e. p. Pruddah*, 76 L.T. 692.
- (v.) **P. D.**—*Admiralty Jurisdiction of County Court—Action in rem—Right to Jury—County Court Act, 1888, s. 101; County Court Admiralty Jurisdiction Amendment Act, 1869, s. 2*.—In an action *in rem* to recover freight in a county court, the defendant is not entitled to trial by jury.—*The Theodora*, 76 L.T. 627.

**Criminal Law:—**

- (vi.) **P. C.**—*Trial abroad "according to the Laws of Great Britain"—Foreign Jurisdiction Act, 1890* (53 & 54 Vict., c. 37), s. 1.—A trial of a British subject on a criminal charge in a foreign country in which a tribunal is established by an Order in Council or by the Foreign Jurisdiction Act, 1890, need not be made to adhere strictly to the English form of procedure.—*Carew v. Crown Prosecutor in Japan*, 77 L.T. 1.
- (vii.) **Q. B.**—*Practice—Writ of Error—Dispensing with Attendance of Plaintiff, a Prisoner*.—The Court can dispense with the attendance at an argument on a writ of error of the plaintiff who has been convicted of felony and is in custody.—*Richards v. The Queen*, L.R. [1897]\* 1 Q.B. 574.

**Dentist:—**

- (viii.) **C. A.**—*Registration—Dentists Act, 1878* (41 & 42 Vict., c. 33), ss. 6, 7, 37.—A person whose articles expired before 1st August, 1879, and who failed to make the declaration required by sect. 7 of the Act, is not entitled to be registered as a dentist under sect. 37.—*Reg. v. the General Council of Medical Education*, L.R. [1897] 1 Q.B. 764; 2 Q.B. 203; 76 L.T. 706.



**Descent:—**

- (i.) **C. D.**—*Coparceners—Lunatic—Lunacy Regulation Act, 1858, ss. 124 and 135—Lunacy Act, 1890, s. 123—Act to Amend the Law of Inheritance (3 & 4 Wm. IV., c. 106), s. 2.*—Under sects. 124 & 135 of the Lunacy Regulation Act, 1858, land was sold, one moiety of which belonged to a lunatic as heir to his mother who was a coparcener, who did not obtain seisin. The lunatic died intestate. *Held*, that the proceeds of the sale of the moiety belonging to him were to be considered as real estate, which he took by descent and not by purchase, and that the entire moiety descended to his heir-at-law. *Cooper v. France*, 14 Jur. 214; 19 L.J. (n.s.) Ch. 313 followed.—*In re Matson*; *James v. Dickinson*, 77 L.T. 69.

**Easement:—**

- (ii.) **C. A.**—*Right of Support.*—Two detached houses were held from the same freeholder under leases which expired in 1896. They were sub-leased to separate tenants for the remainder of the term less a few days. By agreement between these tenants, one required for a nominal rental a right to support of the dividing wall between their respective gardens. Some years before the expiry of the sub-leases, each of the tenants obtained a new lease of his holding for 999 years reckoned from the day of execution, but to take effect in possession from the day after the expiry of the head lease. A question arose whether the right of support, which would have expired with the sub-leases, was continued. *Held*, that in the absence of reservation, no right of support was acquired under the new lease. *Richards v. Rose* (9 Exch. 218) distinguished.—*Howarth v. Armstrong*, 77 L.T. 62.

**Ecclesiastical Law:—**

- (iii.) **Consistory Court of Rochester.**—*Faculty Refused for Gates or Figures to Chancel Screen—Resolution of Vestry.*—On a petition by the vicar and churchwardens of Richmond and of the chapelwardens of St. Matthias, a faculty for the erection of a chancel screen at St. Matthias was granted, but a faculty for gates to the screen, or for a crucifix with or without figures, was refused. A resolution of the select vestry on the subject of the petition was dispensed with.—*The Vicar of Richmond and Others v. All Persons Having Interest*, L.R. [1897] 1 P. 70.
- (iv.) **Consistory Court of St. Albans.**—*Chancel Screen—Crucifix and Figures.*—A faculty, permitting the erection on a chancel screen of figures of the Crucifixion, was granted by the Court.—*The Vicar and Churchwardens of Great Bardfield v. All Having Interest*, L.R. [1897] P. 185.
- (v.) **Consistory Court of Wakefield.**—*Alms Dish—Church Expenses—Duty of Churchwardens.*—A churchwarden who vexatiously refuses to place into the alms dish a bag in which money has been collected at a service, offends against ecclesiastical law. Churchwardens are the proper custodians of money collected for ordinary church expenses, and should place it in a bank in their joint names.—*The Office of the Judge Promoted by Howell v. Holdroyd*, L.R. [1897] P. 198.

**Ejectment:—**

- (vi.) **Q. B.**—*Tenant from Year to Year—Notice to Quit—Date.*—A defendant, who had agreed to take premises for three years, the rent to commence from the 9th May, 1891, stayed on beyond his term and paid rent quarterly. On 28th September, 1896, notice was served on him to quit on 25th March, 1897. *Held*, that the notice was bad, as the tenancy did not commence on the 25th March.—*Simmons v. Underwood*, 76 L.T. 777.

### Employer and Workman :—

- (i.) **Q. B. D.**—*Engagement for a Year—Breach—Jurisdiction of Magistrate—Employers and Workmen Act, 1875 (38 & 39 Vict., c. 90), s. 4.*—By written agreement, A. undertook to serve B., and B. to employ A. for 52 weeks from 23rd October, 1896. A. quitted the employment on 16th November. On 16th December, B. obtained £10 damages in the police-court against A. for absenting himself from 16th to 28th November, and on 29th December he obtained another judgment for the like amount for absence from 30th November to 12th December. *Held*, that as the jurisdiction of the magistrate is limited by sect. 4 of the Act to £10, it was exhausted by the first judgment, and that as both periods of absence had expired when the first proceedings were taken, they formed only one breach of the contract.—*James v. Joseph Evans & Co.*, L.R. [1897] 2 Q.B. 180; 77 L.T. 78.

### Fishery :—

- (ii.) **C. A.**—*Grant of Exclusive Right of Angling—Pollution of River—Right of Action.*—A grant of exclusive right to fish with rod and line in part of a river is a profit *à prendre*, and will give a right of action against a person who causes damage by polluting the river. *Smith v. Kemp* (2 Salk 637) and *Holford v. Bailey* (8 Q.B. 1000 and 13 Q.B. 426) considered.—*Fitzgerald v. Firbank*, L.R. [1897] 2 Ch. 96; 76 L.T. 584.

### Gaming :—

- (iii.) **Q. B. D.**—*Using House for Gaming—Question of Law.*—A person who, with his friends in his own house, casually plays a game which may be unlawful, does not commit the offence of opening a house for unlawful gaming. The question of whether a game is lawful or not is one for the Judge.—*Reg. v. Davies*, L.R. [1897] 2 Q.B. 199; 76 L.T. 786.
- (iv.) **C. A.**—*“Place” used for Betting—Betting Act, 1853 (16 & 17 Vict., c. 119), ss. 1, 2, 3.*—The word “place” used in sects. 1, 2, and 3 of the Betting Act must be limited in meaning to a place of the same nature as a betting house, office, or room (*Rigby, L.J.*, dissenting). *Hawke v. Dunn* (22, p. 97 (vii.)) disapproved of.—*Powell v. The Kempton Park Racecourse Co., Limited*, L.R. [1897] 2 Q.B. 342; 77 L.T. 2.

### Guarantee :—

- (v.) **C. A.**—*Statute of Frauds (29 Car. 2, c. 3), s. 4.*—The defendants wrote to one of the plaintiffs by name, “15th September.—*Re Burton.*—We hereby guarantee the safety of the above investment,” and on the following day they wrote, “We acknowledge to have received from you the sum of £—— as under: A mortgage on the estate at T., the property of Mr. Burton, £360.” In 1891 the plaintiff A. transferred for £300 the benefit of the mortgage to the plaintiff B. In 1896 the two plaintiffs sued the defendant for £360 on the guarantee. *Held*, that the two letters satisfied the Statute of Frauds; that the defendants guaranteed that the loans should be repaid; but that A. was entitled to recover the actual loss only, viz., £60, and that B. had no claim as the guarantee was a personal one to A.—*Sheers and Another v. Thimbleby & Son*, 76 L.T. 709.

### Husband and Wife :—

- (vi.) **Q. B. D.**—*Non-liability of Husband for Maintenance—Poor Law Amendment Act, 1868 (31 & 32 Vict., c. 122), s. 83.*—A woman had heard nothing of her husband since 1864. She knew he was in the Marines, and her aunt by marriage was his sister. In 1889 she went through the marriage ceremony with another man and lived with him for some

years, continuing cohabitation after she had information that her husband was alive. *Held*, that she had committed adultery, and her husband was not liable for her support.—*Mitchell v. The Torrington Union*, 76 L.T. 724.

- (i.) **Q. B.**—*Separation Deed—Covenant against Molestation—Divorce Proceedings in America*.—A husband who had covenanted in a deed of separation not to molest his wife, commenced an action in America for divorce. *Held*, that this was molestation, and that the wife was entitled to damages for breach of contract, and to an injunction to restrain the husband from doing any act in this country with regard to the proceedings in America.—*Hunt v. Hunt*, L.R. [1897] 2 Q.B. 304; 76 L.T. 779.
- (ii.) **Q. B. D.**—*Arrears of Alimony not a Debt in Bankruptcy—Debtors Act, 1869—Bankruptcy Act, 1883, s. 37*.—Arrears of alimony accrued at the date of a receiving order against a husband do not become a debt provable on his bankruptcy, but can be enforced under sect. 5 of the Debtors Act, 1869 (*Linton v. Linton*, 52 L.T. 782; 15 Q.B.D. 239), and a committal order is good.—*Kerr v. Kerr*, 77 L.T. 29.
- (iii.) **P. D.**—*Divorce—Adultery of Petitioner—Discretion of Court—Matrimonial Causes Act, 1857, s. 31*.—A wife who has committed adultery may be entitled to a decree of dissolution where the wilful neglect or misconduct of the husband has conduced to her offence.—*Symons v. Symons*, L.R. [1897] P. 167.
- (iv.) **P. D.**—*Divorce—Nullity—Wife Pregnant by another Man at Time of Marriage*.—Concealment by a woman at time of marriage that she is pregnant by another man does not render the marriage void.—*Moss v. Moss*, L.R. [1897] P. 263.
- (v.) **C. D.**—*Gift to Married Woman of Sum "not exceeding £200"—Married Women's Property Act, 1870, s. 7*.—A wife, married in 1877, became entitled under a will to a sum of £180 and to another sum of about £20. *Held*, that the wife took under different titles, and that sect. 7 of the Married Women's Act must be applied to each sum separately.—*In re Davis; Harrison v. Davis*, L.R. [1897] 2 Ch. 204.
- (vi.) **P. D.**—*Restitution of Conjugal Rights—Substituted Service—Rules of 1869, r. 175*.—In a wife's demand for cohabitation, where the address of the husband could not be obtained, the Court allowed substituted service to be made to his solicitors.—*In the matter of the Petition of Tucker*, L.R. [1897] P. 83.

### India:—

- (vii.) **P. C.**—*Jurisdiction Conferred in a Native State*.—Civil and criminal jurisdiction given to the British Government along a line of railway by the rules of an independent State in India, was held to apply only to offences committed on the railway and connected with its administration, and not to authorise the arrest on the railway of a person charged with an offence committed in another part of India.—*Sayad Muhammad Yusufud din v. The Queen*, 76 L.T. 813.

### Infants:—

- (viii.) **C. A.**—*Custody—Talfourd's Act (2 & 3 Vict., c. 54)—Custody of Infants Act, 1873—Guardianship of Infants Act, 1886, s. 5*.—The Court has jurisdiction to override the common law rights of a father to the custody of his children, and in a proper case may give the custody to the mother, though she has been guilty of matrimonial misconduct.—*In re A. and B. (Infants)*, L.R. [1897] 1 Ch. 786.

**Insurance:—**

- (i.) **C. D.—Accident Policy—Contract for Year.**—In an accident policy a new contract arises on the payment of the premium for each year and the amount payable under the policy is not affected by an assignment not extending to after acquired property, made in a previous year.—*Stokell v. Heywood*, L.R. [1897] 1 Ch. 459.

**Lease:—**

- (ii.) **C. A.—Covenant not to Assign Without Consent—Breach—Relief under s. 4 of Conveyancing Act, 1892—Conveyancing Act, 1881, s. 14, sub-s. 2, 6.**—Where a lease has been assigned without consent, in breach of covenant, sect. 4 of the Conveyancing Act, 1892, gives jurisdiction to the Court to relieve the underlessee from forfeiture; but such relief should be granted sparingly, and only where he has exercised all reasonable precaution. *Wardens of Cholmeley School v. Sewell* (71 L.T. 88; 2 Q.B. [1894] 906) considered.—*Inray v. Oakshette*, L.R. [1897] 2 Q.B. 218; 76 L.T. 682.

**Licensing:—**

- (iii.) **Q. B. D.—Removal of Off Licences—Licensing Act, 1872 (35 & 36 Vict., c. 94), s. 50.**—Sect. 50 of the Licensing Act has reference to off licences as well as to on licences, and therefore an order for the removal of an off license cannot be made unless notice has been served on the occupier of the premises from which the license is to be detached.—*Reg. v. Thornton and Others and Lacey*; *c. p. Lacon & Co., Limited*, L.R. [1897] 2 Q.B. 308; 77 L.T. 26.

**Local Government:—**

- (iv.) **C. D.—Sewering of Private Street—Notice to Frontagers—Public Health Act, 1875, s. 150.**—In a street which was not repairable by the inhabitants at large, houses were drained by pipes laid by the owners under advice of the representative of the local authority. The local authority subsequently gave notice under sect. 150 of the Public Health to all the frontagers except one to sewer the street, and in default executed the work themselves and apportioned the cost. In an arbitration thereon a sum was apportioned to two frontagers and an action was brought to enforce payment. *Held*, that the street had never been sewered by the frontagers "to the satisfaction of" the local authority, and that though notice had not been given as required by sect. 150 to all the frontagers yet the question was closed by the arbitrators' award and therefore the defendants were liable.—*The Handsworth District Council v. Derrington*, 77 L.T. 73.
- (v.) **C. D. & C. A.—Notice to Frontage Owners—Construction of Statutes—Public Health Act, 1875, s. 150—Private Street Works Act, 1892 (55 and 56 Vict., c. 57), s. 22—Interpretation Act, 1889 (52 & 53 Vict., c. 63), s. 38.**—The defendant, an owner of frontage on a private street, had failed to comply with a notice to sewer and make up the street served upon him under s. 150 of the Public Health Act by the plaintiffs, the urban authority. Before the plaintiffs were ready to do the work themselves they had adopted the Private Street Works Act, 1892, which provides that "sect. 150 of the Public Health Act, 1875, shall not apply to any part of a district in which this Act is in force." *Held*, that by the terms of the Interpretation Act, 1889, sect. 38, the liability of the defendant was expressly preserved and that the expenses incurred by the plaintiffs in doing the work were, with interest and costs, a charge upon the defendant's premises. Decision of Court below affirmed.—*Heston and Isleworth District Council v. Grout*, L.R. [1897] 2 Ch. 306; 76 L.T. 613.

- (i.) **C. A.**—*Water Supply—Local Government Act, 1888, s. 57—Public Health Act, 1875, ss. 51, 52.*—The extension of existing mains of an urban authority into an area added to the district is a construction of water works within sect. 52 of the Public Health Act, and a water company which already supplied the area was held entitled to an injunction in consequence of the notice required by that section not having been served upon them. Decision of Court below (22, p. 100 (iii.)) reversed. *Cleveland Water Co. v. Redcar Local Board* (20, p. 45 (iii.)) distinguished. — *Huddersfield Corporation v. Ravensthorpe Urban District Council*, L.R. [1897] 2 Ch. 121; 76 L.T. 817.
- (ii.) **C. A.**—*Urban District Council—Drainage—Surface Water—Right to Discharge into Stream—Public Health Act, 1875, ss. 15, 17, 308.*—Decision of the Court below (22, p. 106 (i.)) affirmed. — *Durrant v. The Branksome Urban District Council*, L.R. [1897] 2 Ch. 291; 76 L.T. 739.

### **Mandamus:—**

- (iii.) **C. A.**—*Refusal of Local Authority to approve Plans.*—An action will not lie for a mandamus to compel a district council to approve plans of which they have, after consideration, honestly disapproved. — *Smith v. The Chorley District Council*, L.R. [1897] 1 Q.B. 678; 76 L.T. 637.

### **Married Woman:—**

- (iv.) **C. D.**—*Restraint on Anticipation—Admission Defeating Life Estate.*—A married woman was entitled to income for life for her separate use without power of anticipation, subject to cesser if she succeeded to another interest of a certain value. Under an erroneous impression she executed a deed pole admitting that her interest had determined, and on the faith of this deed one of her husband's creditors altered his position. *Held*, that as she had no power of her own will, for value or not, to bring about a cesser which had not occurred, the admission on the deed was not binding, and that she was not estopped from shewing the real facts. — *Bateman v. Faber*, L.R. [1897] 2 Ch. 223; 77 L.T. 71.
- (v.) **C. D.**—*Policy of Insurance effected in 1874—Trust for Wife and Children—Married Women's Property Act, 1870, s. 10 Applies—Married Women's Property Act, 1882, ss. 11 & 22.*—A husband insured his life in 1874 for the benefit of his wife and children, under sect. 10 of the Married Women's Property Act, 1870. This Act was repealed by the Married Women's Property Act, 1882, but the repeal was not, by sect. 22, to affect any act done or right acquired while the former Act was in force. He died in 1897. *Held* (following in *re Adams's Policy Trusts*, 23 Ch. Div. 525; 48 L.T. 727) that the Act of 1870 applied and that a trustee must be appointed under sect. 10 of that Act. *In re Soutar's Policy Trust*, 26 Ch. Div. 236; 50 L.T. 262, discussed. — *In re Turnbull; Turnbull v. Turnbull*, 77 L.T. 47.

### **Metropolis:—**

- (vi.) **Q. B. D.**—*Damage to Street Lamp—Liability—Metropolis Local Management Act, 1855, s. 207.*—Notwithstanding that a street lamp projects slightly over the roadway, a driver who without negligence breaks it is liable for the damage under sect. 207 of the Act. — *Burgess v. Morris*, 77 L.T. 97.
- (vii.) **Q. B. D.**—*Public Sewer—Nuisance—Remedy—Public Health (London) Act, 1891 (54 & 55 Vict., c. 76), s. 2 (1b).*—A sewer, part of the main drainage of London, does not fall within sect. 2 of the Public Health Act, 1891, and therefore a nuisance arising from a surface ventilator of such a sewer cannot be dealt with summarily under the Act. — *The Vestry of Fulham v. The London County Council*, L.R. [1897] 2 Q.B. 76; 76 L.T. 691.

**Mines :—**

- (i.) **Q. B.**—*Right to Support*.—Where a grant of minerals gives also a right to do things which would, apart from subsidence, damage the surface and provides that reasonable compensation shall be made for all damage caused by the exercise of any of the powers of the grant, this does not imply a right to let down the surface on paying compensation. But the owner of minerals is not liable for subsidence caused by the act of his predecessor in not leaving or providing support.—*Greenwell and Others v. The Low Beechburn Coal Co., Limited*, L.R. [1897] 2 Q.B. 165; 76 L.T. 759.

**Mortgage :—**

- (ii.) **C. A.**—*Foreclosure Decree—Certificate—Interest—Payment Before Date Named*.—In an action by a mortgagee to enforce his security, the terms of the master's certificate certifying the amount due including, according to custom, six months' interest, will not be carried on a motion of the mortgagor to make payment at a date earlier than that named in the certificate and to have a corresponding reduction of interest.—*Hill v. Rowlands*, 77 L.T. 34.

**Partnership :—**

- (iii.) **C. D.**—*Principal and Agent—Liability of Deceased Partner—Appropriation of Payments by Creditor—Partnership Act, 1890, s. 9—Statute of Limitations, 21 Jac. 1, c. 16, s. 3—Mercantile Law Amendment Act, 1856, s. 9*.—The private estate of a late partner in a firm of agents is not liable for a debt to the principal incurred by the firm after the partner's decease (the doctrine laid down in *Devaynes v. Noble*, *Houlton's case*, 1 Mer. 16, applied to sect. 9 of the Partnership Act). The fiduciary position of an agent does not prevent his setting up the defence of the Statute of Limitations (*Kemp v. Gye*, L.R. 5 H.L. 656, applied); nor does the appropriation by the principal to a statute barred debt of a payment made by the agent. But where a principal has made an appropriation to an item which is disallowed, he is not at liberty to make a fresh appropriation.—*In re Friend; Friend v. Young*, 77 L.T. 50.

**Patent :—**

- (iv.) **C. A.**—*Posting abroad Article infringing English Patent*.—A person who posts abroad to a trader in England in execution of an order from him a parcel, the carriage and delivery of which would be an infringement of an English patent by the trader, is not liable himself for the infringement. Decision of Court below reversed. See 22, p. 71 (iii.).—*Badische Anilin und Soda Fabrik v. Johnson & Co. and Basle Chemical Works, Bindschedler*, L.R. [1897] 2 Ch. 322.

**Practice :—**

- (v.) **C. A.**—*Non-payment of Costs—Acting Vexatiously—Stay of Proceedings*.—Where a plaintiff has acted vexatiously in a litigation, the Court will order a stay of proceedings in his action until he has made payment of costs which he has been ordered to pay, though it would not do so solely on the ground of his inability to pay. *In re Wickham; Marony v. Taylor*, 35 Ch. Div. 272; 57 L.T. 468, considered and applied. See also 22, p. 105 (iii.).—*Graham v. Sutton, Carden & Co.*, 77 L.T. 35.
- (vi.) **C. D.**—*Costs of Interlocutory Proceedings—O. xxviii., r. 11*.—Where interlocutory applications have been ordered to stand to the trial, the costs are to be treated as costs in the action and need not be mentioned in the judgment. Where such applications have been disposed of but costs reserved, such costs are not to be mentioned in the judgment or

order or allowed on taxation without the special direction of the judge.  
—*British Natural Premium Provident Association, Limited v. Bywater*,  
77 L.T. 22.

- (i.) **C. A.**—*Costs—Taxation—Re-taxation—Orders xxxv., r. 4, and lxx., r. 27 (41).*—Under the above orders the Court, or a judge, can direct a bill of costs which has been carried in for taxation at a district registry to be re-taxed elsewhere.—*Stevens v. Griffin*, 76 L.T. 808.
- (ii.) **C. D.**—*Contempt—Attachment—O. lii., r. 4.*—Where a notice of motion is given for committal, or for leave to issue a writ of attachment for disobeying an order of Court, a copy of the affidavit of service of order must be served on the defendant contemporaneously with the notice of motion, unless he was in Court when the order was made.—*Hall & Co. v. Trigg*, L.R. [1897] 2 Ch. 219; 76 L.T. 807.
- (iii.) **C. A.**—*Pleading—Particulars.*—In an action to restrain defendants from selling as the best goods which the plaintiffs manufactured, goods which they produced as a second quality only, and from falsely and fraudulently representing that the plaintiffs' goods were inferior to those made by the defendants, it was *held*, that particulars of times and places of alleged sales were all the information that the defendants could require to enable them to meet the case made by the plaintiffs.—*Duke & Sons v. Wisden & Co.*, 77 L.T. 67.
- (iv.) **C. A.**—*Pleading.*—Where an act would be a tort if committed in this country, a plea that it was committed abroad is bad as a defence to an action here in respect of it, unless the act would be an innocent one by the law of the country where it was committed.—*Machado v. Fontes*, L.R. [1897] 2 Q.B. 231; 76 L.T. 588.
- (v.) **C. A.**—*Defence Struck Out as an Abuse of Process of Court.*—Where a statement of defence is shown by facts not in dispute to be a sham defence, the Court has jurisdiction to strike it out to prevent an abuse of legal machinery.—*Remington v. Scoles*, L.R. [1897] 2 Ch. 1; 76 L.T. 667.
- (vi.) **C. A.**—*Special Indorsement—Recovery of Land and Mesne Profits—O. iii., r. 6—O. xiv., r. 1—Common Law Procedure Act, 1852, s. 214.*—A plaintiff specially endorsed a writ for possession of land and mesne profits. In an affidavit in support of a summons for leave to enter final judgment, it appeared that the mesne profits were really for double rent for holding over. The Judge made an order for possession and mesne profits up to date of plaintiff obtaining possession. *Held*, that the affidavit did not invalidate the writ, and that the order was within the terms of the writ.—*Southport Tramways Co. v. Gandy*, L.R. [1897] 2 Q.B. 66; 76 L.T. 815.
- (vii.) **C. A.**—*Affidavit of Documents—Discovery tending to Criminate—Time to take Objection.*—An order for discovery of documents may be made, notwithstanding the objection of the person to whom it is issued that discovery would tend to criminate him. The proper way and time to raise the objection is in his affidavit in answer.—*Spokes v. Grosvenor Hotel Co. and Others* (No. 1), L.R. [1897] 2 Q.B. 124; 76 L.T. 677.
- (viii.) **C. A.**—*Discovery from Defendant against whom no Relief is Sought—O. xxxi., r. 12.*—Where, in a shareholders' action against directors and others for conspiring to defraud a company, the company is joined as a defendant, an order for discovery may be made against the company though no claim is made against it in the action.—*Spokes v. Grosvenor Hotel Co. and Others* (No. 2), 76 L.T. 679.
- (ix.) **C. A.**—*Discovery—Affidavit that Documents are Part of Deponents Evidence.*—Where defendants in an affidavit of documents alleged that certain papers were part of the evidence supporting their case, the

- plaintiff was held not to be entitled to inspection.—*Frankenstein v. Gavin's House to House Cycle Cleaning and Insurance Co. and Others*, L.R. [1897] 2 Q.B. 62; 76 L.T. 747.
- (i.) **C. A.**—*Discovery—Interrogatories—Action for Forfeiture of Lease.*—In an action for forfeiture of lease for breach of covenant, the Court will not grant to the plaintiff discovery or leave to administer interrogatories.—*Earl of Mexborough v. The Whitwood Urban District Council*, L.R. [1897] 2 Q.B. 111; 76 L.T. 765.
  - (ii.) **C. A.**—*Libel—Consolidation of Actions—Law of Libel Amendment Act, 1888 (51 & 52 Vict., c. 64), s. 5.*—Where a person brings actions against two or more defendants on substantially the same libel, a Judge may, before the defences are declared, order the actions to be consolidated under sect. 5 of the Act. *Stone v. The Press Association, Limited*, L.R. [1897] 2 Q.B. 159; 77 L.T. 41.
  - (iii.) **C. A.**—*Mistake—Consent Order Set Aside.*—Decision of Court below (22, p. 102 (ii.)) affirmed. *Stewart v. Kennedy*, 15 App. Cas. 108, applied.—*Wilding v. Sanderson*, 77 L.T. 57.
  - (iv.) **C. A.**—*Libel on Newspaper—Original MS.—Discovery—O. xxxi., rr. 12 & 18.*—In an action for libel in a newspaper, which was admitted by the proprietors, who apologised and paid money into Court, it was held that an order for inspection of the MS. ought not to be made.—*Hope v. Brash*, L.R. [1897] 2 Q.B. 188; 76 L.T. 823.
  - (v.) **C. A.**—*Interpleader—Order for Sale—Application of Proceeds—O. lvii., r. 12.*—A claim on goods which had been seized by the sheriff was made by the holder of a bill of sale given to secure a loan repayable by 17 monthly instalments at 60 per cent. Held (Rigby, L.J., dissentiente) that the Judge had power under O. lvii., r. 12, to direct the sale of the goods and the discharge of the debt, with interest at the agreed rate up to the date of repayment only, the surplus going to the execution creditor.—*Forster v. Clowser; Diprose Claimant*, 76 L.T. 825.
  - (vi.) **C. D.**—*Prisoner—Witness—Order to Governor of Prison—O. xxxvi., r. 35—Seton, p. 89.*—Where the evidence of a prisoner was required at the hearing of an action, an order to produce him was directed, in an *ex parte* motion, to be issued, not before the case was in the paper for trial, to the governor of the gaol in the form given in Seton, p. 89.—*Jenks v. Ditton*, 76 L.T. 591.
  - (vii.) **C. D.**—*No Counterclaim or Third Party Notice—Trustee Act, 1893, s. 45.*—In an action to compel executors of trustees to replace a fund lost through improper investment, it was claimed under sect. 45 of the Act to have the estate of a married woman without power of anticipation impounded. Held that, although the executors had not counterclaimed or given third party notice to the married woman, the Court could dispose of the matter; and leave was given to apply in chambers.—*In re Holt; ex re Rollason; Holt v. Holt*, 76 L.T. 776.
  - (viii.) **C. D.**—*Solicitor—Compromise between Parties.*—Plaintiff and defendant may compromise an action without the intervention of the solicitors, but if they do so to deprive a solicitor of his lien the compromise will not be allowed. An applicant whose own affidavits do not prove his own case may support his case by reading affidavits which have been filed against him.—*In re Margetson and Stanley-Jones*, L.R. [1897] 2 Ch. 314; 76 L.T. 805.
  - (ix.) **C. D.**—*Married Woman—Separate Examination—Settled Estates Act, 1877, s. 50—Married Women's Property Act, 1882, ss. 1, 5.*—A woman married before, but acquiring property after the commencement of the Married Women's Property Act, 1882, need not be separately examined in an application, to which she is a party, under the Settled Estates Act, 1877.—*In re Batt's Settled Estates*, L.R. [1897] 2 Ch. 65.



- (i.) **C. D.—Patent—Discontinuance of Action for Infringement—Certificate—***Patents, &c., Act, 1888 (46 & 47 Vict., c. 57), s. 29, sub-s. 6.*—In an action for infringement of patent, if the plaintiff gives notice of discontinuance before pleadings are closed, the Court cannot enquire into facts in order to determine whether a defendant should have a certificate that his particulars of objection were reasonable.—*Wilcox and Gibbs v. Janes*, L.R. [1897] 2 Ch. 71.
- (ii.) **C. D.—Compound Settlement—Settled Land Acts—Settled Land Act, 1890, s. 4 (1).**—Several settlements were made under powers of a will by which lands were limited to one for life with remainder to her eldest son with remainders over, with power to charge the property with an annuity for any husband who should survive her, and with portions for younger children. *Held*, that trustees appointed for the purposes of the Settled Land Act must be appointed for the purposes of all the settlements.—*In re Tibbit's Trusts*, L.R. [1897] 2 Ch. 149; 77 L.T. 88.
- (iii.) **C. D.—Vendor and Purchaser Summons—Frivolous and Vexatious—***O. xxxv., r. 4.*—In an agreement to sell a public-house the vendor undertook that if he opened another house within a certain distance of the premises during the occupancy of the purchaser or his widow he would pay the purchaser £500. Before completion, the purchaser agreed to sell the house to B. with a similar penalty on his own part in like circumstances. But the original vendor refused to covenant with B., who then took out a vendor and purchaser summons for a declaration that he was entitled to the covenant. *Held*, that B.'s remedy was for specific performance with abatement and that the summons should be struck out as frivolous and vexatious.—*In re Bartlett and Berry's Contract*, 76 L.T. 751.
- (iv.) **P. D.—Divorce—Death before Suit of Alleged Adulterer.**—In a petition for dissolution of marriage where adultery is charged with a person deceased the leave of the Court must be obtained to excuse making him a co-respondent.—*Slaytor v. Slaytor and Jackson*, L.R. [1897] P. 85.
- (v.) **P. D.—Divorce—Costs—Delay in Enforcing Order.**—Where no steps has been taken for more than six years to enforce an order for costs in a decree nisi, application must be made to the Court for leave to issue execution.—*Goodwin v. Goodwin and Arnold*, L.R. [1897] P. 87.
- (vi.) **P. D.—Will—Probate—Incorporated Document.**—Probate was granted of a will by which a bequest was made of books entered in a catalogue without requiring the catalogue to be brought into the Registry under rules 12 and 13 of 1862.—*In the goods of Balme*, L.R. [1897] P. 261.

### Probate:—

- (vii.) **P. D.—Next of Kin Abroad—Limited Grant of Administration to Stranger.**—Where it would have taken many weeks to communicate with the next of kin of a deceased, a general grant for a limited time was made to a firm of accountants who held the deceased's books.—*In the goods of Suarez*, L.R. [1897] P. 82.

### Pur Autre Vie:—

- (viii.) **C. D.—Devolution—Wills Act, 1837 (1 Vict., c. 26), s. 6.**—To an estate *pur autre vie* devised without words of limitation, the personal representative of the person last entitled succeeds, under sect. 6 of the Wills Act during the life of the *cestui que vie*.—*In re Sheppard; Sheppard v. Manning*, L.R. [1897] 2 Ch. 67; 76 L.T. 756.

**Powers:—**

- (i.) **C. D.—Power of Appointment by Deed or Will—Double Portion.**—A testator left £10,000 in trust for his daughter for life and afterwards amongst her children, as she should by deed or will appoint, and in default equally. She made a will, distributing the fund equally amongst her three children. Subsequently by deed she appointed one-third of the fund, £3,333 6s. 8d., to one of her children, but made no change in her will. *Held*, that the doctrine of double portions applies only where the father is the apportioner, and that therefore the child who took by deed took also under the will a third of the remainder of the fund.—*In re Ashton*; *Ingram v. Papillon*, 77 L.T. 49.
- (ii.) **C. D.—Power of Appointment—Lapsed Shares.**—J. K., under a power of appointment, bequeathed £5,000, and also all the residue of her property, to nephews and nieces by name equally. By a codicil, she gave legacies out of her own money, and directed all legacy duties to be paid out of "general residue," but there was no direction for payment of debts. Two of the appointees predeceased the testatrix. *Held* (following *in re Davis's Trusts*, L.R. 13 Eq. 123; 25 L.T. 227), that the lapsed shares went as in default of appointment.—*In re Boyd*; *Kelly v. Boyd*, L.R. [1897] 2 Ch. 232; 77 L.T. 76.
- (iii.) **C. D.—Fraud on Power—Remoteness.**—By a marriage settlement, property was given to the wife for life, with remainder to her children, under such conditions as she should appoint, and, in default of appointment, amongst them in equal shares. She had three children, to each of two of whom she appointed in trust one-third of her estate, and the remaining third she appointed in trust to pay the income to her other daughter until she should enter a sisterhood, and subject thereto to the two other children in equal shares. *Held*, that the appointment was not a fraud on the power (following *Hodgson v. Halford*, 11 Ch. Div. 959), and that the gift over was good as not infringing the rules against perpetuities (following dictum in *Boughton v. James*, 1 Coll. Ch. Cas. 46).—*Wainwright v. Miller*, L.R. [1897] 2 Ch. 255; 76 L.T. 708.
- (iv.) **C. D.—Fraud on Power—Severance of Good from Bad Appointment.**—A father agreed with the three children of his first marriage, who were resident with him, amongst whom he had a power of appointment under the settlement, to set aside a portion of the settled fund in favour of his second wife and her children. He left the whole fund by will to one of the children entitled, subject to an annuity to the other two, and with the request that the one who had the corpus should settle £100 a year on the second wife and her children. *Held*, that the agreement and the request to favour the second family were invalid, but that otherwise (following *Topham v. Duke of Portland*, 1 De G. J. and S. 570) the appointment was good.—*Viant v. Cooper*, 76 L.T. 768.

**Restraint of Trade:—**

- (v.) **C. D.—Agreement in Restraint of Trade—Death of Covenantee—Rights of Surviving Partner.**—The defendant, in consideration of employment, agreed with the late owner of a school not to engage in tuition within a certain radius of the school for a period not expired. During the defendant's engagement, the plaintiff became a partner in the school under an agreement, by which he succeeded to the ownership. *Held*, that the defendant's undertaking was not limited to the life of the person with whom it was made, and as the undertaking was part of the goodwill of the school, the plaintiff was entitled to an injunction. *Jacoby v. Whitmore* (49 L.T. 355) followed.—*Smith v. Hawthorn*, 76 L.T. 716.

**Rating:—**

- (i.) **Q. B. D.**—*Water Rate—House and Garden—Waterworks Clauses Act, 1847, s. 68—Grand Junction Waterworks Act, 1852, s. 46.*—Justices in determining the assessment to water rate of a house and its garden occupied together, must value the premises as they exist as one tenement, and have no jurisdiction to diminish the assessment on the ground that the garden is unnecessarily large and might be severed and part applied to other purposes.—*Grand Junction Waterworks Co. v. Davies*, L.R. [1897] 2 Q.B. 209; 76 L.T. 833.
- (ii.) **H. L.**—*Public Park—Beneficial Occupation.*—A county council acquired, under statutory powers, but not in fulfilment of a duty, land for a public park in perpetuity. The expense of maintenance was in excess of any revenue. *Held*, affirming decision of Court below (22, p. 20 (iv.)), that the park was not rateable, as there was no beneficial interest. *See also* 21, p. 16 (iii.).—*Churchwardens, &c., of Lambeth v. London County Council*, 76 L.T. 795.
- (iii.) **Q. B. D.**—*Floating Pontoons—Liability to be Rated.*—In a creek, excavated for the purpose, two pontoons were placed, fastened to piles and dolphins by shackles, which could be detached. They were held to be rateable as enhancing the value of the occupation of the land. *Reg. v. Morrison* (1 Ell. and Bl. 150) followed.—*The Tyne Pontoons Co. v. The Guardians of the Tynemouth Union*, 76 L.T. 782.

**Railway:—**

- (iv.) **R. & C. C. C.**—*Siding Rent—Railway Rates and Charges, No. 10 (Lancashire and Yorkshire Railway)—Order Confirmation Act, 1892 (55 and 56 Vict., c. 48), s. 5, sub-s. 4—Railway and Canal Traffic Act, 1894, s. 1, sub-s. 1.*—A railway company, after carrying coal in consignees' own trucks, had allowed the loaded trucks to remain without extra charge in sidings for an indefinite period. The company altered its system and allowed four days to consignees for taking delivery, making after that a charge of 6d. per day per truck for siding accommodation. *Held*, that this was not an increase in any charge within the meaning of sect. 1 of the Railway and Canal Traffic Act, 1894, and that the circumstances were such as to justify the company in limiting the accommodation; but that the reasonableness of the charge was a question for an arbitrator.—*The Manchester and Northern Counties Federation of Coal Trades Association v. The Lancashire and Yorkshire Railway*, 76 L.T. 786.
- (v.) **Q. B.**—*Obstructing Road—Penalty—Railway Clauses Consolidation Act, 1845 (8 & 9 Vict., c. 20), ss. 53, 54, 55.*—A railway interfered with an occupation road without previously making a sufficient one in its place. *Held*, that they were liable to a penalty under sect. 54 of the Act in an action by the owner and a tenant of part of the road. *Semble*, that they would be liable to the full penalty to every person owning any part of the obstructed road.—*Llewellyn and Others v. The Vale of Glamorgan Railway Co.*, L.R. [1897] 2 Q.B. 239; 76 L.T. 778.
- (vi.) **C. A.**—*Accommodation Works—Railway Clauses Consolidation Act, 1845 (8 & 9 Vict., c. 20), ss. 68-73.*—Land was conveyed to a railway company for certain payments as compensation for severance and damages of all kinds and in full satisfaction for all accommodation and other works, the vendor reserving the right to make at his own cost level crossings at specified spots. The vendor's representatives desired to erect a bridge over the line. *Held*, that under the agreement no works for the use of the land, other than those specified, were to be done by the company or anybody else, and that Railway Clauses Act could not be invoked.—*The Rhondda and Swansea Railway Co. v. Talbot*, L.R. [1897] 1 Ch. 131; 76 L.T. 694.

**Receiver and Manager:—**

- (i.) **C. A.**—*Appointment without Salary—Allowance for Extra Work.*—A man who had undertaken to act as manager and receiver of a business without salary was allowed to charge a weekly wage for labour done by him in the business as a workman. See 22, p. 105 (vi.).—*Harris v. Sleep* (No. 2), L.R. [1897] 2 Ch. 80; 76 L.T. 670.

**Revenue:—**

- (ii.) **Q. B. D.**—*Estate Duty—Finance Act, 1894* (57 & 58 Vict., c. 30), s. 5 (3).—Estate duty is not payable on an ultimate absolute interest in settled property, which, through failure of intermediate interests, becomes vested in the life tenant.—*Attorney-General v. Wood and Others*, L.R. [1897] 2 Q.B. 102; 76 L.T. 654.
- (iii.) **Q. B. D.**—*Repairs to "Tied" Houses—Income Tax Acts, 1842*, s. 100, *First Case*, r. 3; 1853, s. 2, *scheds. A and D—Finance Act, 1894*, s. 35.—Repairs done by brewers to their tied houses are not a trade expense and for assessment purposes, such houses fall under schedule A, not under schedule D. *Watney v. Musgrave* (5 Ex. Div. 241; 42 L.T. 690) applied.—*Brickwood & Co. v. Reynolds*, 77 L.T. 31.
- (iv.) **Q. B. D.**—*Shares and Debentures—Transfer to Names of Executors without Probate—55 Geo. III., c. 184*, s. 37.—An English company, who transferred into the names of American executors, who had not taken out English probate, the shares and debentures of an American holder, deceased, and paid to the executors interest accrued due on the debentures up to the date of the testator's death, were held not to have taken possession of, and administered the estate so as to become liable to a penalty under sect. 37 of the above Act.—*Attorney-General v. New York Breweries Co.*, L.R. [1897] 1 Q.B. 738; 76 L.T. 721.
- (v.) **C. A.**—*Debentures Repayable with Premium—Stamp Act, 1891* (54 & 55 Vict., c. 39), s. 86, *sched. 1.*—A limited company issued debentures of £100 each, with an undertaking to pay back each with a premium of £7 10s. Held, that each debenture was a security for £107 10s., and liable to *ad valorem* duty under schedule 1, division B, of the Stamp Act, 1891.—*Rowell v. Commissioners of Inland Revenue*, L.R. [1897] 2 Q.B. 194.
- (vi.) **Q. B. D.**—*Stamp Duty—Annuities Granted under Borrowing Powers—Stamp Act, 1891* (54 & 55 Vict., c. 3), ss. 54, 60, 87 (2).—Sect. 87 (2) of the Stamp Act applies to terminable annuities, in which each annual payment discharges a portion of the loan in consideration of which the annuity was granted, not to perpetual annuities. The latter, therefore, are liable to an *ad valorem* duty of 10s., not of 2s. 6d., per £100.—*The Mersey Dock and Harbour Board v. The Commissioners of Inland Revenue*, L.R. [1897] 1 Q.B. 786; 76 L.T. 596.
- (vii.) **H. L.**—*Succession Duty—Policy of Insurance.*—A father, by gratuitous assignation, gave to his daughter policies of long standing on his own life, and she thereafter paid the premiums. Held, that neither succession duty nor account duty was payable by the daughter on receiving the policy moneys.—*The Lord Advocate v. Fleming or Robertson*, L.R. [1897] A.C. 145.

**Settlement:—**

- (viii.) **C. D.**—*Trust for Accumulation—Thelluson Act* (39 & 40 Geo. III., c. 98), s. 1.—Policies of insurance on different lives were settled on trust to invest the amounts payable on the falling in of each life and accumulate the fund until all the policies should have become due. Held, that the period of accumulation would terminate with the life of the settlor.—*In re Errington; Errington-Tarbut v. Errington*, 76 L.T. 616.

- (i.) **C. A.**—*Estoppel*.—Decision of Court below (22, p. 78 (iii.)) approved. *Board v. Board* (29 L.T. 459; L.R. 9 Q.B. 48) considered. *Paine v. Jones* (30 L.T. 779; L.R. 18 Eq. 320) distinguished.—*Dalton v. Fitzgerald*, L.R. [1897] 2 Ch. 86; 76 L.T. 700.
- (ii.) **C. D.**—*Construction—Hotchpot*.—Of two funds comprised in a marriage settlement, one, the property of the wife, was, in the event of an appointment being made to any of the children, to be brought into hotchpot. The other, the property of the husband, was to be on similar trusts. The first fund was fully appointed in unequal shares. In the other no appointment had been made. *Held*, that the two funds were distinct; that the first was not to be brought into hotchpot; and that the second was to be equally divided amongst the children.—*In re Marquis of Bristol; Earl Grey v. Grey*, L.R. [1897] 1 Ch. 946; 76 L.T. 757.
- (iii.) **C. D.**—*Marriage Settlement—Covenant to Settle After Acquired Property*.—A husband covenanted to settle any property he might acquire during the coverture. Premises were subsequently demised to him for 21 years under covenant not to underlet or assign without consent. He afterwards became bankrupt and the lessor claimed possession from the wife. *Held* (following *Lewis v. Madlocks*, 8 Ves. 150; 17 Ves. 55) that the premises came within the settlement; that a withholding of consent by the lessor could be dealt with as pointed out in *In re Turcan*, 40 Ch. Div. 5; 59 L.T. 712; and that therefore the premises were bound by the trusts of the marriage settlement.—*Lord Churston v. Buller*, 77 L.T. 45.

#### Settled Land :—

- (iv.) **C. A.**—*Conditional Life Estate—Non Compliance—Settled Land Act, 1882, ss. 2, 51, 52, 58, sub-s. (1), clause 6*.—Settled premises were to be occupied by a widow so long as she was "desirous of personally occupying the same." There was a gift over on her decease or second marriage. After having joined in granting a lease of the premises for five years, she became desirous of exercising the powers of a tenant for life. *Held*, that until the expiration of the lease she had not the possession required by sect. 58 of the Settled Land Act, 1852, to confer upon her the powers of a tenant for life.—*In re Edwards's Settlement*, 76 L.T. 774.

#### Statute of Limitations :—

- (v.) **C. D.**—*Effect of Acknowledgment of Statute Barred Debt by Executrix and Beneficiary—Statute of Limitations—Lord Tenterden's Act (9 Geo. IV., c. 14), ss. 1, 2—Mercantile Law Amendment Act (19 & 20 Vict., c. 97), ss. 13, 14*.—An acknowledgment by an executrix and beneficiary of a statute barred debt, though not binding on her co-executor personally, may bind her personally and the unadministered assets of the testator. *Tullock v. Dunn* (Ry. and Moo. 217); *Scholey v. Walton* (12 M. and W. 510); *Fordham v. Wallis* (10 Hare 217); *in re Hollingshead* (58 L.T. 758) considered.—*In re Macdonald; Dick v. Fraser*, L.R. [1897] 2 Ch. 181; 76 L.T. 713.
- (vi.) **C. A.**—*"Person Claiming under a Mortgage"*—*Real Property Limitation Acts, 1837 & 1874, s. 9*.—The owner of an undivided moiety of a piece of land had been in possession of part of the land from 1875 to 1896, and the defendant was his representative. In 1886 the person who claimed as owner of the other undivided portion mortgaged it, and in 1890 conveyed his equity to the plaintiff, who paid off the mortgage, and now claimed, as tenant in common in fee, an equal undivided moiety of the portion in the possession of the defendant. *Held*, that

the plaintiff was not a "person claiming under any mortgage" within the Real Property Limitation Act, 1837.—*Thornton v. France*, L.R. [1897] 2 Q.B. 143; 77 L.T. 38.

- (i.) **C. A.**—*Inspectorship Deed—Statute of Limitations*—Decision of Court below (see 22, p. 100 (ii.)) affirmed.—*Trevor v. Hutchins*, 76 L.T. 636.

**Solicitor:—**

- (ii.) **C. A.**—*Compromise of Claim before Action commenced*.—A solicitor cannot before issue of writ compromise a claim on behalf of his client without express authority.—*Macaulay v. Polley*, L.R. [1897] 2 Q.B. 122; 76 L.T. 643.
- (iii.) **C. A.**—*Costs—Sale of Property subject to Encumbrance—General Order under Solicitors Remuneration Act, 1881* (44 & 45 Vict., c. 44), sch. 1, part 1, r. 9.—Where a second mortgagee sells subject to the first mortgage, the amount of the first mortgage is to be deemed part of the purchase money for the purpose of calculating costs.—*Fortescue v. Mercantile Bank of London*, L.R. [1897] 2 Q.B. 236; 76 L.T. 645.
- (iv.) **C. A.**—*Costs—The Limitation Act* (21 Jac. 1, c. 16), s. 3—4 & 5 Anne, c. 16 (also called c. 3), s. 19—*Solicitors Act, 1843* (6 & 7 Vict., c. 73), s. 37.—A cause of action for costs arises on the completion of the work to which the costs relate, and the Statute of Limitations begins then to run, not from the date when the solicitor's right of action commences. *Reeves v. Butcher* (L.R. [1891] 2 Q.B. 509; 65 L.T. 329) considered.—*Coburn v. Colledge*, L.R. [1897] 1 Q.B. 702; 76 L.T. 608.

**Ship:—**

- (v.) **C. A.**—*General Average*.—Parties liable to make a general average contribution cannot require the statement to be made up at any particular place.—*The Wavertree Sailing Ship Co. v. Love*, L.R. [1897] A.C. 373; 76 L.T. 576.
- (vi.) **Q. B.**—*Charter-Party—Construction*.—A vessel was chartered for the carriage of a cargo of ore from a foreign port. The charterers were not to be liable for delays in loading caused, amongst other things, by floods, accidents to railways and to piers from which the ore was to be shipped. Floods caused a breakdown of the railway which afforded the only means of carrying the ore to the pier for shipment, and the vessel sailed away without cargo. *Held*, that the charterers were protected by the terms of the charter-party.—*Furness and Others v. Forward Bros. & Co.*, 77 L.T. 95.
- (vii.) **P. D.**—*Charter-Party—Deviation—Damage*.—A steamship was chartered to bring a cargo of wheat from abroad to King's Lynn. Under the charter-party, in certain circumstances (which happened), the master was at liberty to leave the port of loading with part cargo of wheat only and to fill in elsewhere, in which case the steamer was to complete the voyage as if a full cargo had been loaded. He went direct to Cardiff to discharge the second part of his cargo, and on the voyage thence to King's Lynn the wheat was damaged. *Held*, that the owners of the ship were liable for the damage as she had deviated from the voyage prescribed by the contract.—*The Dunbeth*, L.R. [1897] P. 133; 76 L.T. 658.
- (viii.) **P. D.**—*Collision—Pilot—Passengers—Merchant Shipping Act, 1894* (57 & 58 Vict., c. 60), ss. 190 to 193, 625, 627.—A collision in the port of London was solely the fault of the pilot of the defendant's ship belonging to that port. But the defendant was *held* to be responsible as the pilotage was not compulsory, certain distressed sailors shipped

by the British consul at a foreign port, who were the only persons on board except the crew, not being "passengers" within the meaning of sect. 65 of the Act.—*The Clymene*, 76 L.T. 811.

- (i.) **P. C.**—*Collision at Anchor*.—The onus of justification is on a vessel under way if it comes into collision with a vessel at anchor exhibiting a proper light, but the vessel at anchor must keep a competent watch.—*"Mary" Tug Co., Limited v. British India Steam Navigation Co., Limited*, L.R. [1897] A.C. 351.
- (ii.) **H. L.**—*Collision—Compulsory Pilotage*—London District Merchant Shipping Acts, 1854, s. 379, and 1894, s. 625.—Decision of Court of Appeal (see 22, p. 28 (vi.)) affirmed. Owners of the *Edenbridge v. Green and Others*.—*The Rutland*, L.R. [1897] A.C. 333; 76 L.T. 662.
- (iii.) **P. C.**—*Art. 18 of Regulations for Preventing Collisions at Sea*.—The Court is not bound to hold that Art. 18 of the Regulations under the Merchant Shipping Act must be complied with the instant that danger becomes apparent.—*Owners of ss. "Kwang Tung" v. Owners of ss. Ngapoota*, L.R. [1897] A.C. 391.
- (iv.) **C. C.**—*Seaman—Discharge at Foreign Port—Maintenance and Passage Home*—Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60), ss. 134, 186.—Liability for passage home and for maintenance of a seaman discharged at a foreign port is satisfied when the Consul fixes a sum therefor and accepts the master's undertaking to pay it without actual deposit. "Home," in sect. 186 (2) is not necessarily the British port at which the seaman shipped, and expenses incurred by the seaman by default of the master are not "wages."—*Edwards v. Steel, Young & Co.*, L.R. [1897] 1 Q.B. 712; 76 L.T. 689.
- (v.) **C. A.**—*Insurance—Master Part Owner—Mortgage—Barratry*.—Decision of Court below (22, p. 109 (iv.)) affirmed.—*Small v. United Kingdom Mutual Insurance Co.*, 76 L.T. 828.
- (vi.) **C. A.**—*Insurance—Liability of Broker for Premiums*.—Decision of Court below (22, p. 79 (vi.)) affirmed.—*The Universe Insurance Co. of Milan v. The Merchants' Marine Insurance Co.*, L.R. [1897] 2 Q.B. 93; 76 L.T. 748.
- (vii.) **Q. B.**—*Insurance—Underwriters' Liability*.—Where a loss occurs to a ship through the negligent navigation of the assured himself, the underwriters are liable, unless the negligence was wilful.—*Tronders Anderson & Co. v. The North Queensland Insurance Co., Limited*, 77 L.T. 80.
- (viii.) **C. C.**—*Marine Policy Covering War Risks*.—Where a ship insured against war risk is captured but restored after action brought, but before trial, the rights of plaintiff as for total loss are not diminished.—*Ruys and Others v. London Assurance Co.*, L.R. [1897] 2 Q.B. 135; 77 L.T. 23.
- (ix.) **P. D.**—*Necessaries—Master's Disbursements—His Lien—Owners not Liable—Settlement of Action*.—The master of a vessel which was worked by a firm who were not her legal owners procured coals at a foreign port on bills drawn by him on the firm. The bills were dishonoured, and the coal suppliers by arrangement with the master brought an action in rem in his name for their own benefit. The shipowners settled the action with the master. Held, that as the liabilities were incurred by the master on account of the ship a maritime lien could be enforced by him notwithstanding that the legal owners were not personally liable to the coal suppliers, and that the settlement was void as against the suppliers.—*The Ripon City*, 77 L.T. 98; L.R. [1897] P. 226.

- (i.) **H. L.**—*Removal of Wreck from Tidal River—Expenses—Owner—Harbours, Docks, and Piers Clauses Act, 1847 (11 Vict., c. 27)—Aire and Calder Navigation Act, 1889 (52 & 53 Vict., c. 122), s. 47.*—Decision of Court of Appeal (**21**, p. 67 (v.)) affirmed; and held also that as remedy was prescribed by the Act, expenses could not be recovered by action in the High Court.—*Barracough v. Brown*, 76 L.T. 797.
- (ii.) **H. L.**—*Floating Beacon—Salvage—Jurisdiction—Merchant Shipping Act, 1854—County Court Admiralty Jurisdiction Act, 1868.*—Decision of Court of Appeal (*see 21*, p. 68 (iii.)) affirmed.—*Wells and Another v. The Gas Float Whitton*, No. 2, L.R. [1897] A.C. 337; 76 L.T. 663.
- (iii.) **Q. B.**—*Charter-Party—"Weather-Working Days"—Computation.*—Where a charter-party provides for the working at a certain rate per weather-working day, days which are only partially available are counted as whole days where more than half a day's work is done and as half days where less is done.—*The Brankelow Steamship Co. v. Lamport and Holt*, L.R. [1897] 1 Q.B. 570.

### Trade Name:—

- (iv.) **C. D.**—*Common Law Trade Mark—Evidence.*—An injunction was granted restraining the defendant company from applying the word "Hunyadi" to water derived from other sources than the springs of the plaintiff known by that time, and it was held that evidence of "intent to deceive" ought not to be tendered in trade mark actions where the goods sold were on the face of them "calculated to deceive."—*Saxlehner v. Apollinaris Co., Limited*, L.R. [1897] 1 Ch. 893; 76 L.T. 617.

### Trade Mark:—

- (v.) **H. L.**—*Right to Name apart from Registration.*—Decision of Court of Appeal (**22**, p. 32 (iii.)) affirmed. *See also 19*, p. 27 (i.), and p. 106 (iv.), and **20**, p. 58 (iii.).—*Birmingham Vinegar Brewery Co. v. Powell*, 76 L.T. 792.
- (vi.) **C. A.**—*Registration—"Solio"—Photographic Paper—Practice in Patent Office—Patents, &c., Act, 1888 (51 & 52 Vict., c. 50), s. 10, sub-s. 1 (d) (e).*—It is the practice of the Patent Office to refuse to register, in connection with photographic paper, the words "Sun" or "Sol" alone, or with a prefix or suffix; and the Court approved of such a refusal in the case of the word "Solio" as applied to paper of that character.—*In re The Eastman Photographic Materials Company's Trade Mark Application*, 76 L.T. 730.
- (vii.) **C. A.**—*"Magnolia"—Geographical Name—Character of Goods—Patents, Designs and Trade Marks Acts, 1883 (s. 70) and 1888 (s. 10).*—The Magnolia Company were owners of three registered trade marks which they desired to assign: (1) a representation of a Magnolia flower without any words; (2) the same device with the addition of the words "Magnolia Anti-Friction Metal"; (3) the word "Magnolia" alone. Held, that (1) was a good trade mark, and that on the facts there was no valid objection to its assignment within sect. 70 of the Patents Act, 1883. On this point the decision of the Court below (**22**, p. 110 (iv.)) was reversed. Held, that (2) and (3) had been wrongly registered, because they had, before registration, been used to distinguish an article manufactured by a secret process. That (2) was invalid also because the words annexed had reference to the character or quality of the goods within sect. 10 (sub-sect. 1) of the Patents Act, 1888; but that (3) did not come under the like objection. That the



objection to (2) and (3) as a geographical name failed. Decision of Court below (22, p. 110 (iv.)) that (2) and (3) were invalid and wrongly registered, approved.—*In re The Magnolia Metal Company's Trade Marks*. 76 L.T. 672.

### Trust :—

- (i.) **C. D.**—*Construction—Whether Tenant for Life purchasing Reversion becomes Trustee for Remainderman.*—A lessee bequeathed a lease not renewable to one for life, with remainder to another for life, with remainder to latter's children. The second life tenant purchased the reversion. *Held*, that the doctrine of *Keech v. Sandford* does not apply to leases not renewable, and that the purchaser was not a trustee for the remaindermen.—*Longton v. Wilsby*, 76 L.T. 770.
- (ii.) **C. D.**—*Bank—Trust Money placed to Trustee's Overdrawn Account.*—By the direction of a sole trustee, trust money was sent to his bankers to his trust account. He had no other than a private account, which was overdrawn, and the bankers advised him that the money had been placed to this account, but he made no rectification. Subsequently he became bankrupt, indebted to the bank. There was no evidence that the bank had designed to benefit themselves. *Held*, that the bank were not liable for the loss of the trust money.—*Coleman v. The Bucks. and Oxon. Union Bank, Limited*, L.R. [1897] 2 Ch. 313; 76 L.T. 684.
- (iii.) **C. A.**—*Will—Precatory Trust.*—A gift of residue to the testator's wife, her heirs, executors, administrators and assigns, absolutely "in the fullest confidence that she will carry out my wishes in the following particulars," which were that she would leave to the testator's daughter, L., the money that would become payable on the death of the wife on a policy (her own property) on her own life, and also the same part of the residue, which would be payable to her on a policy on the testator's life, was *held* to be a gift free from any condition or trust (Rigby, L.J., dissenting).—*In re Williams; Williams v. Williams*, L.R. [1897] 2 Ch. 12; 76 L.T. 600.

### Vagrant :—

- (iv.) **Q. B. D.**—*Bona fide Belief of Adultery—Wilful Neglect to Maintain Wife and Family—Vagrant Act, 1824 (5 Geo. IV., c. 83), s. 3.*—Where a man *bona fide* believed that his wife had committed adultery, and when he had offered, under certain conditions, to support his children, it was *held*, that justices were right in dismissing a charge against him under the Vagrancy Act, 1824, of having "wilfully refused or neglected" to maintain his family.—*Morris v. Edmonds*, 77 L.T. 56.

### Vendor and Purchaser :—

- (v.) **C. A.**—*Mortgage to Building Society—Power of Sale—Whether Transferred to Assignee.*—Decision of Court below (22, p. 111 (ii.)) affirmed.—*In re Runney and Smith's Contract*, 76 L.T. 800.
- (vi.) **C. A.**—*Agreement for Sale of Land—Parol Evidence—Statute of Frauds, s. 4.*—A written agreement was entered into for the sale and purchase of "24 acres of land, freehold, and all appurtenances thereto at T." *Held*, that parol evidence was admissible to show that the vendor was owner of land of those dimensions at T., and that on the day on which the agreement was signed, the defendant inspected the land with him. Decision of Court below (22, p. 111 (iii.)) reversed.—*Plant v. Bournne*, L.R. [1897] 2 Ch. 281; 76 L.T. 820.
- (vii.) **C. D.**—*Land and Policies Included in One Mortgage—Land Sold and Policies Retained by Mortgagee—Purchaser of Land Entitled to Mortgage Deed—Vendor and Purchaser Act, 1874, s. 2, r. 5.*—Where a mortgagee

sold land, but retained policies of insurance, which were included in the mortgage deed, it was *held*, that the purchaser of the land was entitled to possession of the mortgage deed.—*In re Fuller and Leathley's Contract and Vendor and Purchaser Act*, 1884; *in re Williams and the Duchess of Newcastle's Contract*, L.R. [1897] 2 Ch. 144; 76 L.T. 646.

- (i.) **C. D.**—*Building Agreement—Exercise of Option to Purchase Freehold—Subsequent Termination of Agreement by Tenant's Delay in Building.*—Under a clause in a building agreement, the defendant, the lessee, gave notice to the plaintiff, the lessor, to purchase the freehold. Shortly after, under another clause, the plaintiff gave notice of the termination of the agreement, in consequence of the defendant's failure to proceed with the works. *Held*, that compliance with the clause as to proceeding with the buildings was not a condition precedent to exercise of the option of purchase, and that the possession of the defendant ought not to be interfered with pending completion.—*Raffety v. Schofield*, L.R. [1897] 1 Ch. 937; 76 L.T. 648.

**Will:—**

- (ii.) **C. D.**—*Construction—Charitable Bequest.*—A bequest to a certain charity, "or some one or more kindred institutions" is an alternative and not a substitutional gift.—*In re Delmar's Charitable Trusts*, L.R. [1897] 2 Ch. 163; 76 L.T. 594.
- (iii.) **C. D.**—*Construction—Gift in Remainder to a Class—Children of Deceased Member to Take Parent's Share.*—A testator gave his real and personal property in trust for sale and conversion, and to pay the interest to his wife during widowhood, and after to transfer the property to his brothers and sisters in equal shares, the lawful child or children of any deceased brother or sister taking the parent's share. One brother died before the date of the will, leaving issue, who were admitted to have no claim. One leaving issue died before the testator, but after the date of the will. One, who left no issue, survived the testator, but had attested the will. On an originating summons to determine the persons entitled and their rights, subject to the widow's interest, it was *held* that the estate would be divisible in equal shares amongst the brothers and sisters (excluding the one who witnessed the will) who survived the testator, to the exclusion of such as died in his lifetime and of their children; and that in the event of any of the brothers and sisters entitled dying during the widow's tenancy, their shares would be divested in favour of their respective children. *Thornhill v. Thornhill* (4 Madd 377) approved.—*In re Hannam; Hadderley v. Hannam*, L.R. [1897] 2 Ch. 39; 76 L.T. 681.
- (iv.) **C. A.**—*Construction—Charitable Purposes.*—A testator left property on trust for the purchase of advowsons or presentations, but on conditions which construed strictly were hardly applicable. *Held*, that on the construction the object of the testator was to promote Evangelical doctrines and that the purchases were to be made with that purpose; that this was a charitable purpose and the gift was good. Decision of the Court below (22, p. 112 (iii.)) reversed.—*In re Hunter; Hood v. Attorney-General*, L.R. [1897] 2 Ch. 105; 76 L.T. 725.
- (v.) **C. D.**—*Construction—Issue—Child of Deceased Wife's Sister.*—A testatrix gave the income of personalty to nephews and nieces named, directing that if any should die leaving issue, such issue should take the parent's share. One niece, M., married her deceased sister's husband, F. H. A., and had issue G. The testatrix also bequeathed money in trust for "my niece, M., the wife of F. H. A., for life," and after her decease "in trust for her daughter, G., absolutely." *Held*,

that for the purposes of the will G. was to be regarded as legitimate, and was entitled to succeed to her mother's share.—*In re Walker*; *Walker v. Lutyens*, 77 L.T. 94; L.R. [1897] 2 Ch. 238.

- (i.) **C. D.**—*Gift to Nephews and Nieces—Illegitimate Nephew.*—A testator gave a legacy to his wife's nephew R., and left a moiety of the residue of his property to his wife's nephews and nieces equally. R. was illegitimate. *Held*, that he was entitled to share in the moiety.—*In re Parker*; *Parker v. Osborne*, L.R. [1897] 2 Ch. 208.
- (ii.) **C. D.**—*Interest on Advanced Share.*—When a child of a testator receives an advancement subsequent to the date fixed for distribution, interest from that date must be charged on the advance.—*In re Rees*; *Rees v. George* (17 Ch. Div. 701; 44 L.T. 241), and *in re Dallmeyer* (L.R. [1896] 1 Ch. 372; 73 L.T. 61) considered.—*In re Lambert*; *Moore v. Middleton*, L.R. [1897] 2 Ch. 169; 76 L.T. 752.
- (iii.) **P. D.**—*Revocation—Revival—Wills Act, 1837, s. 22.*—A testatrix made a will revoking a former will and subsequently executed a codicil which purported to be a codicil to the will revoked. *Held*, that the codicil revived the earlier will, and that both wills with the codicil must be admitted to probate.—*In the goods of Chilcott*, L.R. [1897] P. 223.
- (iv.) **C. D.**—*Specific Property to Sell and Set Apart.*—A specific property was left in trust for sale and investment, but with power to trustees to retain any investment and to set apart portions to answer settled legacies. The residue was given to testator's children equally. The trustees apportioned one of the investments, which was valuable, to answer one of the legacies and to answer as far as it could one share of the residue. *Held*, that the investment could be appropriated to the specific legacy (following *Fraser v. Murdock*, 6 App. Cases 855; 45 L.T. 417), and to the residue even in advance (following *in re Richardson*, 39 Ch. Div. 50; 74 L.T. 12).—*In re Brooks*; *Coles v. Davis*, 76 L.T. 771.

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OF

## ALL REPORTED CASES

IN THE

### Law Times and Law Reports

FOR OCTOBER, NOVEMBER, AND DECEMBER, 1896.

By THOMAS J. BARNES, of the Middle Temple,  
Barrister-at-Law.

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## D I G E S T .

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Where a case has already been given in the Digest for a preceding quarter, the additional report is given after the name of the case, with a reference to the volume of the Digest in which it first appeared, the thick number being the number of the volume.

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- (i.) **P. D.**—*Intestate Married Woman—Husband Bankrupt—Citation—Sureties.*—The official receiver was allowed without finding sureties to administer to a small estate of the intestate wife of a bankrupt on giving him notice without citation.—*In the goods of Sarah Ann Morgan*, 75 L.T. 190.
- (ii.) **C. D.**—*Insolvent Estate—Surplus—Interest—Judicature Act, 1875, s. 10—O. lv., rr. 62, 63.*—In the administration of an estate in a creditor's action, any surplus which remains after discharge of the claims stated in the chief clerk's certificate is applied first in satisfaction of interest from date of order to date of payment, on debts which at law carry interest, and then on paying interest at 4 per cent. on the other debts.—*In re Henley; Alcock v. Henley*, 75 L.T. 307.

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- (iii.) **Q. B. D.**—*Sale of Food and Drugs Act, 1875, ss. 6, 13, 18, 20 & 21.*—Under sect. 21 of the Food and Drugs Act a certificate was held to be admissible in evidence which drew from a comparison between the percentage of solids not fat found in a sample of milk analyzed and the percentage which genuine milk should contain the inference that a named percentage of water had been added to the sample. *Fortune v. Hanson* distinguished.—*Bridge v. Howard*, L.R. [1897] 1 Q.B. 80; 75 L.T. 800.

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- (i.) **C. D.**—*Half Profits—Assignment of Agreement—Receiver—Assets.*—An agreement for the publication of a book cannot be assigned by the publisher without the consent of the author. A receiver in a debenture-holder's action should sell surplus copies of a book published on the half-profit principle for the benefit of all parties. *Hole v. Bradbury* applied to companies.—*Griffith v. Tower Publishing Co., Limited*, L.R. [1897] 1 Ch. 21; 75 L.T. 330.

**Bankruptcy:—**

- (ii.) **Q. B. D.**—*Amendment of Creditors Valuation of Security—Bankruptcy Act, r. 13.*—A secured creditor had on the bankruptcy of his debtor valued his security, which shortly afterwards increased in worth. The trustee in bankruptcy then tendered the assessed value, and gave written notice of intention to redeem. The creditor applied to amend his proof. *Held*, that the creditor had a right to amend, and that the tender and the written notice did not amount to payment.—*In re Newton; e. p. National Provincial Bank of England*, L.R. [1896] 2 Q.B. 403; 75 L.T. 144.
- (iii.) **Q. B. D.**—*Charging Order—Prior Act of Bankruptcy—Title to Money in Court.*—Where an act of bankruptcy has been committed, a charging order subsequently made under sect. 23 of the Partnership Act is not protected by sects. 45 and 49 of the Bankruptcy Act, and money paid into Court under the order belongs to the trustee in bankruptcy.—*Wild v. Southwood*, 75 L.T. 388.
- (iv.) **Q. B. D.**—*Solicitor's Lien—Charging Order—Solicitors Act, 1860, s. 28.*—There is jurisdiction to make a charging order under sect. 28 of the Solicitors Act, 1860, and it should be exercised by a registrar.—*In re Wood; e. p. Fanshawe*, 75 L.T. 387.
- (v.) **Q. B. D.**—*Marine Insurance—Bankruptcy of Underwriter—Salvage Rights of Brokers and of Trustee.*—On the bankruptcy of an underwriter, balances were due by him to brokers for losses on various policies of marine insurance. Subsequently the brokers received salvage on other losses which they had settled in account with the underwriter before his bankruptcy. *Held*, that the salvage was part of the bankrupt's estate, and could not be set off by the brokers against their unpaid losses.—*Elgood v. Harris and Another*, L.R. [1896] 2 Q.B. 491; 75 L.T. 419.
- (vi.) **Q. B. D.**—*Partnership—Solvent Partner an Infant—Dealing with Liquidator with Knowledge of Misapplication of Assets.*—The rule which allows a solvent partner to liquidate the assets of a firm dissolved by the bankruptcy of a member does not apply when the solvent partner is an infant. Whoever pays partnership assets to a liquidator with a knowledge that they will be applied otherwise than to the partnership liabilities will be held liable to account.—*In re Beauchamp Bros.; e. p. Carr*, 75 L.T. 315.
- (vii.) **Q. B. D.**—*Fraudulent Preference—Accommodation Bill—Acceptor a Creditor—Bankruptcy Act, 1883, ss. 37, 48.*—The acceptor of an accommodation bill given to a bankrupt is a creditor within sect. 48 of the Bankruptcy Act, 1883, with a right of proof under sect. 37. Payment to a surety in anticipation of enforcement of his liability may make a fraudulent preference.—*In re Paine; e. p. Read v. Barnard*, L.R. [1897] 1 Q.B. 122; 75 L.T. 316.
- (viii.) **C. A.**—*Debtor Domiciled Abroad—Notice—Service in England—Bankruptcy Act, 1883, ss. 4, 6, rr. 136 to 142.*—Where a bankruptcy notice has been served on a debtor in England it will not be set aside on the ground that he is a foreign subject domiciled abroad, who has

not resided or had a dwelling-house or place of business in England within a year of the presentation of the petition, and that the notice was issued when he was out of England.—*In re Clark*; *e. p. Beyer, Peacock & Co.*, L.R. [1896] 2 Q.B. 476; 75 L.T. 304.

- (i.) **C. A.**—*Partnership—Notice—Service on Receiver—Bankruptcy Rules*, 1883, r. 260.—A receiver and manager of a partnership business who has been appointed by the Court is not a person upon whom a bankruptcy notice can be served under rule 260 in respect of a judgment against the firm.—*In re Flowers & Co.*; *e. p. Ware & Co.*, L.R. [1897] 1 Q.B. 14; 75 L.T. 306.
- (ii.) **C. A.**—*Debtor an Undischarged Bankrupt—Receiving Order—Bankruptcy Act*, 1883, ss. 5 & 7.—Where a bankruptcy petition was presented against an undischarged bankrupt the Court refused to make a receiving order on the ground that to make it would be a waste of money.—*In re Betts*; *e. p. Betts*, L.R. [1897] 1 Q.B. 50; 75 L.T. 292.
- (iii.) **Q. B. D.**—*Receiver—Equitable Execution Judicature Act*, 1873, s. 25 sub-s. 8—O. 50, r. 15a.—Where the official receiver and trustee of a bankrupt had obtained an order for the payment of a sum of money against a creditor of the bankrupt estate whose only property was a life interest under a will, he was appointed, without salary or security, receiver of the creditor's life interest until satisfaction of the sum ordered to be paid.—*In re Gondie*; *e. p. the Official Receiver*, L.R. [1896] 2 Q.B. 481; 75 L.T. 277.
- (iv.) **Q. B. D.**—*Post Nuptial Settlement—Non-trader—13 Eliz., c. 5—Bankruptcy Act*, 1883, s. 47.—A person entitled under his father's will to a sum of money on attaining majority and to a further sum on the death of his mother, made just before coming of age, a post nuptial settlement of all his interest under the will, except a sum set aside to meet his minority debts, upon trust to pay the income to himself for life or until he should charge it, and then in trust for his wife. His mother and brother were parties to the deed and covenanted to make him certain payments. *Held*, that the settlement was for valuable consideration, and though the consideration was given for the purpose of protecting the settlor and his family from future creditors it was not intended to delay or defeat them. A motion on the part of the trustee in bankruptcy to set aside the deed was dismissed.—*In re Tetley*; *e. p. Jeffery*, 75 L.T. 166.

### Bill of Exchange:—

- (v.) **H. L.**—*Accommodation Bill—Fraudulent Alteration—Liability of Acceptor*.—Decision of C. A. and of Q. B. D. (see Vol. 20, p. 3 (iii.) and p. 66 (iii.) affirmed.—*Scholefield v. Lord Londesborough*, L.R. [1896] A.C. 514; 75 L.T. 254.

### Bill of Sale:—

- (vi.) **C. A.**—*Description of Witness Omitted—Void—Bills of Sale Act*, 1878, s. 10; *Amendment Act*, 1882, s. 9 and *Schedule*.—Where, in the attestation clause of a bill of sale, the description of the witness had been omitted, it was *held* that the bill was void as being not in accordance with the form in the schedule of the Act. *Parsons v. Brand and Coulson v. Dickson* followed.—*Sims v. Trollops & Sons*, L.R. [1897] 1 Q.B. 24; 75 L.T. 351.

### Bona Vacantia:—

- (vii.) **C. A.**—*Friendly Society—Objects Exhausted—Funds—Cy près—Bona Vacantia*.—A society was established to provide a fund for the benefit of the widows of ordinary subscribers. On the death of the last subscriber and of the last pensioner, the question arose of title to the

residue of the funds. *Held*, that there was no resulting trust; that *cy pres* did not apply; and that the Crown was entitled to the surplus as *bona vacantia*.—*Cunnack v. Edwards*, L.R. [1896] 2 Ch. 679; 75 L.T. 122.

### Charity:—

- (i.) **C. A.**—*Bequest of Personalty to Tenant for Life, Remainder to Charity—Option to Invest in Land—Validity of Bequest to Charity*.—A testatrix, who died in 1877, left pure personalty to life tenant with remainder to charity. Trustees, under a power in the will, invested part of the fund in mortgage, which was not called in at death of life tenant. *Held*, reversing the decision of the Court below, that the gift to the charity was good.—*In re Hamilton; Cadogan v. Fitzroy*, L.R. [1896] 2 Ch. 617; 75 L.T. 113.
- (ii.) **C. D.**—*Charitable Rent Charge—Liability of Tenant for Years—Charitable Trusts (Recovery) Act, 1891*.—A tenant for years is not, except in special circumstances, liable in an action for debt for non-payment of a rent charge issuing out of the land of which he is in occupation, and there is no personal duty upon him to pay such a charge created for charitable purposes, but the Charity Commissioners can, under the Charitable Trusts (Recovery) Act, enforce payment in equity against the persons legally liable to pay, even though the legal title may not be clear.—*In re the Herbage Rents Charity, Greenwich; the Charity Commissioners v. Green*, L.R. [1896] 2 Ch. 811; 75 L.T. 148.

### Colonial Law:—

- (iii.) **H. L.**—*Canada—Revenue—Import Duty on Steel Rails—Canadian Act, 50 & 51 Vict., c. 39, s. 1 (88), s. 2 (173)*.—The only distinction in the Act between taxed and free steel rails for railways is that of weight. Rails above the specified weight are exempt from duty.—*Toronto Railway Co. v. The Queen*, L.R. [1896] A.C. 551; 75 L.T. 234.
- (iv.) **P. C.**—*Canada—British Columbia Act, s. 3—Mines—Precious Metals—Crown Rights*.—A grant of lands including all minerals does not include gold and other metals, which are the prerogative right of the Crown.—*Esquimalt and Nanaimo Railway Co. v. Bambridge*, L.R. [1896] A.C. 561; 75 L.T. 111.
- (v.) **P. C.**—*New South Wales—Company—Shares issued as paid up—Winding up—Companies Act, 1874, of New South Wales, s. 57*.—A resolution of persons interested in property setting forth the manner in which they propose to put it before the public as a company is not a contract within sect. 57 of the Companies Act of New South Wales (which is similar to sect. 25 of the Companies Act, 1867, 30 & 31 Vict., c. 131), and a shareholder to whom shares are issued as paid-up shares under such a resolution is liable to contribute in a winding up of the company.—*Smith v. Brown*, L.R. [1896] A.C. 614; 75 L.T. 213.
- (vi.) **P. C.**—*New South Wales—Dismissal of Civil Servants—Civil Service Act, 1884*.—The common law right of the Crown to dismiss civil servants at pleasure, is surrendered in the case of those engaged under the Civil Service Act, 1884.—*Gould v. Stuart*, L.R. [1896] A.C. 575; 75 L.T. 110.
- (vii.) **P. C.**—*Victoria—Marine Act, 1890, s. 13—Sunken Wreck—Liability to Clear*.—The registered owner of a ship sunken in a port must bear the expense of clearing the wreck, and cannot escape this liability by abandoning the wreck to underwriters. Sect. 13 of the Victorian Marine Act, 1890, differs from sect. 56 of the English Harbours, &c., Act, 1847.—*Wm. Howard Smith and Sons v. Wilson*, L.R. [1896] A.C. 579.

- (i.) **P. C.**—*Victoria—Probate Duty—Administration and Probate Act, 1890.*—A debt fully secured on property outside the colony cannot be deducted from the value of assets within the colony in a valuation for probate.—*Henty and Another v. The Queen*, L.R. [1896] A.C. 567; 75 L.T. 106.
- (ii.) **P. C.**—*Trinidad and Tobago—Right to Possession of Land—Erroneous Recitals—Equitable Title—Notice—Registry.*—Notice of a prior equitable title is valid although there be in the conveyance of the equitable interest an erroneous recital of the mode in which the equity became vested in the grantor. A purchaser from a vendor out of possession must investigate the interest of a person who is in possession under a registered deed.—*Trinidad Asphalte Co. v. Coryat*, L.R. [1896] A.C. 587; 75 L.T. 108.
- (iii.) **P. C.**—*Nova Scotia—Privileges of Members of Provincial Legislature—British North America Act, 1867 (30 & 31 Vict., c. 3)—Revised Statutes of Nova Scotia, 5th Series, c. 30, s. 20.*—Members of the Provincial Legislature who voted for the imprisonment of a person for contempt of the House were, under an Act of the Legislature giving them the same immunities and powers as are held by members of the Dominion Legislature, *held*, to have a good defence against an action by him for assault and false imprisonment.—*Fielding and Others v. Thomas*, L.R. [1896] A.C. 600; 75 L.T. 216.

### Company:—

- (iv.) **C. D.**—*Debenture Stock Certificate—Purchaser—Mortgagee—Authority of Agent.*—A company applied to its broker for a loan of £3,000 on the security of £8,000 debenture stock, which by trust deed was assignable free from equities. The broker obtained £6,000 on the security accompanied by a certificate from the secretary that the lender was registered as holder of £8,000 debenture stock, which could only be transferred by deed registered in the company's books. The broker paid only £3,000 to the company. *Held*, that though the certificate was a negotiable instrument, the lender was entitled to assume that the broker had authority to deal with it; that the lender was not required to see that the broker paid the full sum to the company, and could prove for the £8,000, though he could receive dividends only on £6,000.—*Robinson v. Montgomeryshire Brewery Co.*, L.R. [1896] 2 Ch. 841.
- (v.) **C. D.**—*Application for Allotment under Mistake—Repudiation—Delay—Payment on Account of Shares.*—A person applied for shares in the Dunlop-Truffault Cycle Co. under the impression that it was connected with the Dunlop Pneumatic Tyre Co. Shortly after an allotment had been made to her she discovered her mistake, and on the 23rd May wrote to repudiate the contract. On the 27th May she paid a sum which was due on allotment, and on the 20th June a further sum then due on the shares. On the 13th July she served notice of motion to remove her name from the register of shareholders. *Held*, that she would have been entitled to rescission of contract on the ground that she was deceived by the use of the name of Dunlop in the prospectus, but that by delay and by payments on account of the shares she had acted in a manner inconsistent with repudiation.—*The Dunlop-Truffault Cycle and Tube Manufacturing Co., Limited*; *Shearman's Case*, 75 L.T. 385.
- (vi.) **C. D.**—*Debentures—Floating Security—Receiver.*—Where a creditor of a company had presented a petition for winding up, it was *held* in a debenture holder's action that a receiver and manager could be appointed notwithstanding that the debentures had not "crystallised."—*In re Victoria Steamboats, Limited*; *Smith v. Wilkinson*, 75 L.T. 374.

- (i.) **C. D.**—*Winding up—Transfer of Shares—Change of Status—Companies Act, 1862, ss. 38, 74, 76, 131, 133, 153.*—Where partly paid up shares were, with the sanction of the liquidator, transferred after the date of a voluntary winding up and the transferee in turn transferred, it was held, that the holder whose name was on the list at the date of the liquidation was liable as a contributory under sect. 38, though under sect. 131 his transfer was effective in other respects; that each of the transferees, though freed from contribution, was bound to indemnify his immediate transferor; and that the Court has power under sect. 153, though it was not exercised in this case, to alter the status of a transferor and release him from liability.—*In re National Bank of Wales, Limited*, L.R. [1896] 2 Ch. 851; 75 L.T. 296.
- (ii.) **C. D. & C. A.**—*General Meeting—Voting—Show of Hands—Proxies dated after Execution.*—Voting at a general meeting of a company should be in person not by proxy. A space for the date of meeting left blank when the proxy is executed can be filled in at any time before the proxy is used. *In re The Caloric Engine and Siren Fog-Signals Co.*, followed; *In re Bidwell Bros., Limited*, overruled.—*Ernest v. Loma Gold Mines, Limited*, L.R. [1896] 2 Ch. 572; [1897] 1 Ch. 1; 75 L.T. 221, 317.
- (iii.) **C. D.**—*Winding up—Borrowing ultra vires—Officer Common to Borrower and Lender—Imputed Knowledge.*—The managing director of a building society was secretary to a land company which borrowed a large sum from the society. The borrowing company exceeded its powers in effecting this loan, but this irregularity was unknown to the lending society, though it was within the knowledge of its managing director as secretary of the land company. Held, that it was not the duty of the person who was an officer both of the lending society and of the borrowing company to give or receive notice that the transaction was *ultra vires*; and therefore that the knowledge could not be imputed to the lending society.—*In re Hampshire Land Co., Limited*, L.R. [1896] 2 Ch. 743; 75 L.T. 181.
- (iv.) **C. D.**—*Winding up—Transfer of Shares with False Certification—Estoppel—Contributory.*—Where a transfer stated falsely that shares were fully paid and where it also bore a false certification by the secretary of the company that certificates of the shares had been lodged, it was held that the purchaser was not liable as a contributory, as the company was estopped from denying the lodgment of certificates of fully paid shares.—*In re Concession Trust, Limited; McKay's Case*, L.R. [1896] 2 Ch. 757; 75 L.T. 298.
- (v.) **C. D.**—*Winding up—"Surplus Assets."*—"Surplus assets" is a term which has not such a recognised meaning as necessarily always to signify the balance after payment of debts and liabilities only, but may in some circumstances signify surplus profits remaining after recoupment of capital out of that balance.—*In re New Transvaal Co.*, L.R. [1896] 2 Ch. 750; 75 L.T. 272.
- (vi.) **C. D.**—*Alteration of Articles—Invalid Issue of Preference Shares—Restitution.*—By the memorandum and articles of a limited company an authorised increase of capital was to be considered as part of the original ordinary capital and to be subject to the like provisions. The company altered its articles and issued preference shares. Held, that the issue was invalid, and that the holders of the preference shares were not shareholders of the company and were entitled to restitution only. *Hutton v. Scarborough Cliff Hotel Co.* followed.—*Andrews v. Gas Meter Co., Limited*, 75 L.T. 267.

**Compensation :—**

- (i.) **Q. B. D.**—*Railway Company—Compulsory Taking of Land.*—Where land was underleased at less than rack rent for the whole term less one day with provisos that the land should be maintained for a purpose which brought no profits to the underlessee, and that if any part of it should be required by a public company under statute the original lessee could re-enter such part, it was held that he was entitled to be paid the full commercial value of a portion taken by a railway company under its private Act.—*In re An Arbitration between Morgan and Another and the London and North-Western Railway Co.*, L.R. [1896] 2 Q.B. 469; 75 L.T. 226.

**Copyhold :—**

- (ii.) **C. A.**—*Heriot—Right to Seize Outside the Manor.*—A beast may be seized as a heriot although it has never been within the manor (see also 22, p. 8 (vi.)).—*Western v. Bailey*, L.R. [1897] 1 Q.B. 87; 75 L.T. 210.

**Copyright :—**

- (iii.) **C. A.**—*Infringement—Music Printed and Published Abroad—Importation and Sale—English Copyright—Copyright Act, 1842, ss. 2, 11, 13, 15 17—International Copyright Act, 1844, ss. 2, 3, 10.*—The plaintiff was the assignee, though unregistered, of the English copyright of a piece of music which was first printed and published in Leipzig. The defendant imported copies from Brussels and sold them in England. Held, that the plaintiff was entitled to an injunction.—*Pitts v. George and Co.*, L.R. [1896] 2 Ch. 866; 75 L.T. 320.

**Criminal Law :—**

- (iv.) **C. C. R.**—*False Pretences—Indictment—Counts—Evidence—Permissible Questions—Misdemeanour and Larceny—Concurrent Sentences*, 27 & 28 Vict., c. 47, s. 9.—In an indictment for obtaining goods by false pretences, the counts should be restricted to those necessary to formulate the charge, and if they are numerous, the Court may be asked to try each one separately. At the trial, the person defrauded may be asked what opinion he formed of the position and occupation of the accused on the receipt of a letter containing the false representations. If the accused is convicted of the charge, he cannot afterwards be convicted of larceny on the same facts. A sentence on a ticket-of-leave man for a fresh offence cannot be made concurrent with the unexpired part of the old sentence.—*Reg. v. John King*, 75 L.T. 392.
- (v.) **C. C. R.**—*Assistant Overseer—Embezzlement—Indictment—Servant of Inhabitants of Parish.*—43 Eliz., c. 2—59 Geo. III., c. 12, s. 7—24 & 25 Vict., c. 96, s. 68—51 & 52 Vict., c. 41, s. 75—56 & 57 Vict., c. 73, ss. 5, 6, §1.—An assistant overseer is not, by the Local Government Act, 1894, constituted a servant of the parish council, and in an indictment of such an officer for embezzlement, he was properly described as in the employment as servant of the inhabitants of the parish, and money received by him for rates was rightly described as their property.—*Reg. v. Smalman*, L.R. [1897] 1 Q.B. 4; 75 L.T. 394.

**Ecclesiastical Law :—**

- (vi.) **Consistory Court of Norwich.**—*Faculty.*—A faculty was ordered to be issued for the retention of three figures on a screen in a parish church.—*Banham (Rector of), Suffolk v. Parishioners of Same*, L.R. [1896] 2 Q.B. 256.



**Fixtures :—**

- (i.) **Q. B. D.**—*Tenant's Fixtures may become part of Freehold.*—A tenant who, on the termination of his tenancy, leaves on the premises his fixtures under an agreement with the landlord that they may be subsequently removed, loses his right to such removal after mortgagees have entered into possession.—*Thomas v. Jennings*, 75 L.T. 274.

**Foreign Court :—**

- (ii.) **Q. B. D.**—*Company Winding up—Property Abroad—Foreign Court—Judgment in rem—Companies Act, 1862, ss. 84, 87, 163.*—Where a foreign Court, in a proceeding *in rem*, orders a chattel within its jurisdiction to be sold and the proceeds divided amongst claimants, one of these who is in England cannot be declared by the English Courts a trustee for another person, though the latter would, according to English law, have a preferential title to the chattel, and though the claimant had notice of that title when making his claim in the foreign Court. *Castrique v. Imry* followed.—*The Minna Craig Steamship Co., Limited, and James Laing*, L.R. [1897] 1 Q.B. 55 ; 75 L.T. 354.

**Franchise :—**

- (iii.) **Q. B. D.**—*Registration—Old Lodger Claim—Omission of Declaration—Jurisdiction to Amend—Parliamentary and Municipal Registration Act, 1878, s. 28 (2).*—Where from an old lodger claim otherwise in order the declaration in Form H., No. 2, of the Registration Order, 1895, was omitted, it was *held*, that the revising barrister had jurisdiction to correct the claim by inserting the declaration.—*Francis v. Metcalfe*, 75 L.R. 380.

**Friendly Society :—**

- (iv.) **C. D.**—*Failure of Objects—Charity—Cy Près.*—A friendly society formed for the relief of distressed members had dwindled to one member, and one annuitant whose annuity was amply secured, when a testator bequeathed to it a legacy. *Held*, that the society, not being a mutual insurance society and poverty being a qualification for relief, was a charity and that the legacy was applicable *cy près*.—*In re Buck ; Bruty v. Mackay*, L.R. [1896] 2 Ch. 727 ; 75 L.T. 312.

**Highway :—**

- (v.) **Q. B. D.**—*Person by whose order Extraordinary Traffic has been Conducted—Highways and Locomotives (Amendment) Act, 1878, s. 23.*—A private landowner who bought building materials to be delivered free on to his premises, and who was aware that a traction engine would be used for their draught, was *held* to be the person by whose order extraordinary traffic was conducted on a public highway and therefore liable to contribute towards the road repairs, under sect. 23 of the Highways and Locomotives Act, 1878.—*Kent County Council v. Lord Gerard*, 75 L.T. 247.
- (vi.) **Q. B. D.**—*Gas Company—Negligence in Repairing Highway—Right of Action against Company—Gas Works Clauses Act, 1847, ss. 11, 29.*—Where a jury had found that a gas company after opening a highway, had left the road in a condition which constituted a public nuisance, it was *held* that the company were liable for mischief caused by their negligence, notwithstanding sect. 11 of the Gas Works Clauses Act, 1847.—*Goodson v. Sunbury Gas Consumers Co., Ltd.*, 75 L.T. 251.

**Husband and Wife:—**

- (i.) **P. D.**—*Restitution of Conjugal Rights—Matrimonial Causes Act, 1884, s. 5.*—Conduct which would disentitle a petitioner to maintain a suit for judicial separation, on the ground of desertion, may empower the Court to refuse a decree compelling the respondent, to return to cohabitation.—*Oldroyd v. Oldroyd*, 75 L.T. 281.
- (ii.) **P. D.**—*Living Apart by Consent—Desertion—Summary Jurisdiction (Married Women) Act, 1895.*—Where husband and wife have been living apart by mutual consent cohabitation must be resumed and broken to sustain a summons for desertion. *Fitzgerald v. Fitzgerald* and *Reg. v. Lereche* considered.—*Bradshaw v. Bradshaw*, 75 L.T. 391.

**Insurance:—**

- (iii.) **Q. B. D.**—*Fire—Indemnity—Benefit to Insurer of Contract of Assured.*—The insurer under a fire policy can recover any benefit which the assured has received from other sources in excess of his loss, and also the value of rights which the assured may have renounced against third parties.—*West of England Fire Insurance Co. v. Isaacs*, L.R. [1896] 2 Q.B. 377.
- (iv.) **C. A. & Q. B. D.**—*Policy on Freight—Claim Consequent on Loss of Time Excepted—Frustration of Adventure.*—A time policy which insured freight against total loss or general average contained a clause "warranted free from any claim consequent on loss of time, whether arising from perils of the sea or otherwise." Soon after the vessel had started with a cargo it was disabled by perils of the sea and had to put back and discharge at the port of loading. The adventure was frustrated by the delay and the freight was totally lost. *Held*, reversing the decision of the Court below, that a claim made for the loss of freight was "a claim consequent on loss of time," and that the assured could not recover.—*Bensaude and Others v. The Thames and Mersey Marine Insurance Co.*, L.R. [1897] 1 Q.B. 29; 75 L.T. 155 and 405.

**Justices:—**

- (v.) **Q. B. D.**—*Search Warrant—Sufficiency of Information—Specification of Goods.*—To justify a magistrate in granting a search warrant it is sufficient if the information can be fairly understood as alleging reasonable grounds for suspecting that the goods sought for are being feloniously dealt with by the defendant, and the search warrant need not specify the goods for which search is desired.—*Jones v. German*, L.R. [1896] 2 Q.B. 418; 75 L.T. 161.

**Lands Clauses Act:—**

- (vi.) **C. A.**—*Arbitration—Costs—Lands Clauses Act, 1845, s. 34.*—By sect. 34 of the Lands Clauses Act, unless an arbitrator "shall award the same or a less sum than shall have been offered by the promoters of the undertaking," costs are to be borne by the promoters. *Held*, that the exception applies only when the subject matter of the award and of the offer is the same.—*Miles v. Great Western Railway*, L.R. [1896] 2 Q.B. 432; 75 L.T. 290.

**Lease:—**

- (vii.) **C. A.**—*Licence to assign—Deposit of Money—Money in Nature of a Fine—Conveyancing Act, 1892, s. 3.*—Under a covenant by the lessee of a building lease not to assign without licence, the lessor may demand as a condition for granting the licence the deposit of a sum of money as security for the performance of the covenants of the lease, as such a deposit is not "in the nature of a fine."—*In re Cosh's Contract*, L.R. [1897] 1 Ch. 9; 75 L.T. 365.

**Libel:—**

- (i.) **C. A.**—*Communication of Contents of Libellous Publication*.—A person into whose hands a libellous publication comes is not answerable to the publisher for communicating the contents to the person libelled.—*The Seyd and Kelley's Credit Index Co., Limited v. Saunders and Chapman*, 75 L.T. 193.

**Limitations:—**

- (ii.) **C. D.**—*Settled Estates—Real Property Limitations Acts, 1833, ss. 1, 3, 20, and 1874, ss. 1 & 2.*—By a settlement made in 1857 a life tenant was entitled to the reversion of land let from year to year, with a power, which he exercised, of appointment subject to a second life tenancy. Circumstances happened under which it was admitted that by the Statutes of Limitations the life tenant's right to recover this land was barred in his lifetime. The second life tenant died without having recovered possession. *Held*, that the estate of the appointee was not barred by sect. 20 of the Real Property Limitations Act, 1874, and that the appointee was entitled under sect. 2 of the Act of 1874 to recover the land within six years from the death of the last tenant for life.—*In re Earl of Devon's Settled Estates; White v. Devon; Steer v. Dobell*, L.R. [1896] 2 Ch. 562; 75 L.T. 178.

**Local Government:—**

- (iii.) **C. A.**—*Public Nuisance—Right of Action by Local Authority—Public Health Act, 1875, s. 107.*—The proceedings in a superior court which under sect. 107 of the Public Health Act a local authority may cause to be taken are the ordinary proceedings, and in the absence of special damage, the fiat of the Attorney-General is necessary to empower such an authority to sue for the abatement of a public nuisance. *Wallasey Local Board v. Gracey* followed.—*Tottenham Urban District Council v. Williamson & Sons, Limited*, L.R. [1896] 2 Q.B. 353; 75 L.T. 238.

**Married Woman:—**

- (iv.) **C. A.**—*Settled Funds—Removal of Restraint on Anticipation—Conveyancing Act, 1881, s. 39.*—Under sect. 39 of the Conveyancing Act the Court ordered the sale of a part of trust funds in which a married woman had a life interest with restraint on anticipation, when it was of opinion that such a course was for her benefit.—*In re Wilson Stewart; Keown-Boyd v. Gilmour*, 75 L.T. 381.
- (v.) **C. A.**—*Restraint on Anticipation—Omission of Words "for her Separate Use"—Married Woman's Property Act, 1882, ss. 1, 2, 19.*—When by a marriage settlement executed before the Married Woman's Property Act, 1882, came into force, an estate was vested in trustees for the use of the woman during life "without impeachment of waste and without power of anticipation," it was *held* that the restraint was effectual although there was no gift "for her separate use."—*In re Lumley; e. p. Hood-Barrs*, L.R. [1893] 2 Ch. 690; 75 L.T. 236.
- (vi.) **Q. B. D.**—*Carrying on Trade—Act of Bankruptcy—Married Woman's Property Act, 1882, s. 1, sub-s. 5.*—A married woman who has given up a business which she had carried on separately from her husband continues subject to the bankruptcy laws until all her trade debts are paid. The issue of a circular by a trader calling a meeting of creditors in such circumstances that it would be dishonest to pay creditors separately before the date of the meeting amounts to an act of bankruptcy.—*In re Dagnal; e. p. Soan and Morley*, L.R. [1896] 2 Q.B. 407; 75 L.T. 142.

**Master and Servant:—**

- (i.) **C. A.**—*School Established Under Deed—Appointment and Dismissal of Schoolmistress.*—Where the mistress of a public elementary school, which was established under a deed of trust, had been appointed and dismissed by an irregularly constituted committee, it was held that she had no right to an injunction to restrain the committee from removing her, notwithstanding that the deed vested the appointment and dismissal of the teaching staff in another body than the committee. *Lane v. Norman* distinguished.—*Pottle v. Sharpe*, 75 L.T. 265.

**Metropolis Management:—**

- (ii.) **C. A.**—*Drainage—New System—Discontinuance of Old Drain—Expense of New Drain—Metropolis Management Act, 1855, ss. 69 & 73.*—The owner of a house the drain of which even though it be not “a sufficient drain” within sect. 73, is discontinued in consequence of a new system of drainage being carried out by a vestry under sect. 69 is not liable for the expenses of making a new house drain.—*Vestry of St. Martin-in-the-Fields v. Ward*, L.R. [1897] 1 Q.B. 40; 75 L.T. 349.
- (iii.) **Q. B. D.**—*New Street—Paving—Liability of Landowner—Metropolis Management Act, 1855, s. 105; Amendment Act, 1862, ss. 77, 112.*—A highway 200 yards long with two houses only on it was laid out as a road and paved by the local authority. *Held*, that the road was not a “new street” within sect. 105 of the Act of 1855 or sect. 77 of the Act of 1862, and that the owner of a plot of land abutting on the road was not liable for paving expenses.—*Vestry of the Parish of St. Mary, Battersea, v. Palmer and Another*, 75 L.T. 362.

**Mortgage:—**

- (iv.) **C. D.**—*Mortgagee of both Fee and Particular Estate—Redemption—Consent of Mortgagee.*—Mortgaged real estate was devised to a wife during the minority of her two children, and was to be equally divided, when the children attained 21, between the wife and the children, “whichever of them might be living at that time.” The widow mortgaged her interest to the mortgagee of the fee and died intestate in the minority of the two children. *Held*, that the children as remaindermen were not, during the continuance of the particular estate, entitled to redeem without the consent of the mortgagee.—*Prout v. Cock*, L.R. [1896] 2 Ch. 808; 75 L.T. 409.
- (v.) **C. D.**—*Claim as Mortgagees and as Creditors—Costs.*—Where a mortgagee, in an action against devisees and personal representatives of a deceased mortgagor, claims general administration in addition to ordinary relief, he will only be allowed costs so far as they relate to his mortgage security.—*In re Banks; Dawes v. Sladen*, 75 L.T. 387.

**Nullity:—**

- (vi.) **P. D.**—*Nullity of Marriage—Non-Consummation—Inference.*—A decree nisi for nullity of marriage was granted on an inference of some latent incapacity beyond what was disclosed by the medical evidence.—*F. v. P.*, 75 L.T. 192.

**Partnership:—**

- (vii.) **C. D.**—*Brewery—Articles—Option to Purchase by Surviving Partner—Valuation—Tied Public Houses—Goodwill—Allowance—Partnership Act, 1890, s. 42.*—Partnership articles in a brewery business provided that the share of a deceased partner should be ascertained in a certain manner, and “thereupon” the continuing partner should have the option to become the purchaser on terms set out. The continuing

partner exercised the option, and pending a settlement carried on the business. *Held*, that "thereupon" meant on a valuation of the whole of the assets being made; that the time and manner of payment prescribed by the deed must be observed; that having regard to sect. 42 of the Partnership Act, 1890, and to evidence that the profits had been increased by the exertions of the surviving partner, he was entitled to a special allowance; and that a valuation of tied public houses, on the basis of what a brewer would give for them at auction, must be taken to include goodwill.—*Page v. Ratcliffe*, 75 L.T. 371.

- (i.) **Q. B. D.**—*Debts of Firm*.—Where one partner takes all the assets of a partnership on a dissolution, he takes them subject to all the debts of the partnership, unless there is an express intention to the contrary.—*In re Daniel*; *e. p. Powell*, 75 L.T. 143.
- (ii.) **Q. B. D.**—*Advance of Capital—Bankruptcy—Partnership Act, 1890, ss. 2 & 3*.—In consideration of a weekly payment out of profits, a person made an advance of capital to a business undertaking, retaining control of his advance and exercising some powers of management in the business. He had also an option, which he did not exercise, to become a partner within a specified time. *Held*, that he was not a partner, but that under sect. 3 on the bankruptcy of the undertaking he could not recover until all other claims had been satisfied.—*In re Young*; *Jones v. Berry*, L.R. [1896] 2 Q.B. 484; 75 L.T. 278.

#### Patent:—

- (iii.) **H. L.**—*Revocation—Amendment of Specification*.—A declaration that a patent is invalid does not estop the patentee from amending the specification by disclaiming a part of his claim, and an order for revocation may be made conditional. Decision of Court of Appeal (*see* Vol. 20, p. 113 (iv.)) varied.—*Deeley v. Perks*, L.R. [1896] A.C. 496; 75 L.T. 233.
- (iv.) **C. D.**—*Amendment of Specification—Petition for Revocation—Patents, &c., Act, 1883, s. 19*.—Leave to apply to amend a specification by disclaimer is in the discretion of the Court, and this discretion is not affected by *Moser v. Marsden*, or *Deeley v. Parkes*.—*In re Dellwick's Patent*, L.R. [1896] 2 Ch. 705.
- (v.) **C. D.**—*Threats of Legal Proceedings—Patents, Designs and Trade Marks Act, 1883, s. 32*.—To support an action to restrain threats of legal proceedings under sect. 32 of the Patents Act, it is not necessary that the document containing the threats should also contain a claim to the patent in respect of which they are made.—*Douglas v. Pintsch's Patent Lighting Co.*, 75 L.T. 332.

#### Police Pensioner:—

- (vi.) **C. A.**—*Non-Compliance with Order for Medical Examination—Non-Payment of Pension—Mandamus—Police Act, 1890, ss. 5, 7, 12*.—Where an order under sect. 5 of the Police Act, 1890, is made for some other object than the medical examination of a pensioner he is not bound to obey the order, and a mandamus will lie against the police authority to enable him to obtain payment of his pension. The police authority cannot, under the Act, cancel a pension without giving a pensioner the option of returning to the force. If a pensioner attends for medical examination, though not at the time or place named in the order, he cannot be treated as having disobeyed the order.—*Reg. v. Lord Leigh*, 75 L.T. 339.

#### Poor Law:—

- (vii.) **H. L.**—*Costs—Poor Law (Payment of Debts) Act, 1859, s. 1*.—An order of the House of Lords for payment of costs is not complete until the

amount has been certified by the Clerk of the Parliaments. Judgment of Court of Appeal (see Vol. 20, p. 81 (vi.)) reversed.—*Guardians of West Ham Union v. Churchwardens of Bethnal Green*, L.R. [1896] A.C. 477; 75 L.T. 286.

# **Post Office Savings Bank :—**

- (i.) **C. D.**—*Nomination of Executor*—*Savings Bank Act*, 1887, s. 3.—A testatrix, some time after executing her will, nominated, under sect. 3 of the Act, one of her executors to receive at her decease an amount standing to her credit in the Post Office Savings Bank. *Held*, that it was her intention to transfer the fund to him in his capacity of executor.—*In re Read*; *Turner v. Read*, 75 L.T. 295.

# **Practice :—**

- (ii.) **C. D. & C. A.**—*Disputed Title—Ejectment—Receiver—Defendant in Possession as Heir-at-Law—Judicature Act*, 1873, s. 25, sub-s. 8.—An order of the Court below, within its jurisdiction under sect. 25, sub-sect. 8, appointing a receiver at the instance of the plaintiff in an ejectment action was discharged where the defendant was in possession as heir-at-law.—*Foxwell v. Van Grutten*, 75 L.T. 311 & 368.
- (iii.) **C. D.**—*Administration—Liberty to Sign Judgment—O. xiv.—Priority.*—Liberty to sign judgment under O. xiv. will not entitle a creditor to priority in an administration action.—*In re Gurney*; *Clifford v. Gurney*, L.R. [1896] 2 Ch. 863; 75 L.T. 332.
- (iv.) **C. D.**—*Originating Summons—Construction of Mortgage—O. liv a., r. 1.*—A question affecting the rights of mortgagor and mortgagee under a mortgage can be determined on an originating summons taken out under O. liv a., r. 1, by the mortgagor, although he has made no offer to redeem; and the mortgagee's costs may be ordered to be added to his security.—*In re Nobbs*; *Nobbs v. Law Reversionary Interest Society, Limited*, L.R. [1896] 2 Ch. 830; 75 L.T. 309.
- (v.) **Q. B. D.**—*Bill of Sale—O. xxxviii., r. 16—Affidavit of Execution.*—A bill of sale will be void if the affidavit of execution is sworn before the solicitor who acts for the grantee in the preparation of the bill.—*Baker v. Ambrose*, L.R. [1896] 2 Q.B. 372.
- (vi.) **H. L.**—*Costs—Sequestration—O. xliii., r. 7.*—An order for sequestration made by a master and confirmed by the Court ought not to be interfered with on appeal unless it has been made on some erroneous principle. The burden of proof, that sequestration under O. xliii., r. 7, would be futile, is on the debtor. The creditor need not indicate any particular property which may be made available. Judgment of Court below reversed.—*Hulbert and Another v. Cathcart*, L.R. [1896] A.C. 470; 75 L.T. 302.
- (vii.) **P. D.**—*Divorce—Sequestration—Trustees not Parties—Matrimonial Causes Act*, 1857, s. 52.—An order to enforce a sequestration against third persons who dispute their liability to the debtor is not made on motion in a suit to which they are not parties.—*Craig v. Craig and Hamp*, 75 L.T. 280.
- (viii.) **C. D.**—*Discovery—Documents Sealed up—Privilege—Jurisdiction of Court to Unseal—O. xxxi., r. 19a (2).*—The term "Privilege" in O. xxxi., r. 19a, includes irrelevancy. The Court has power to unseal and inspect the sealed-up part of books or documents to satisfy itself whether a claim of privilege from discovery is made out or not.—*Ehrmann v. Ehrmann* (No. 2), L.R. [1896] 2 Ch. 826; 75 L.T. 243.

- (i.) **C. D. & C. A.**—*Action on behalf of Crown—Interlocutory Injunction—Undertaking.*—Where the Court decides that the Attorney-General, suing on behalf of the Crown, is entitled to an interlocutory injunction, it is not the practice to require an undertaking as to damages.—*Attorney-General v. The Albany Hotel Co., Limited*, L.R. [1896] 2 Ch. 696; 75 L.T. 140 & 195.
- (ii.) **C. D.**—*Effect of Former Judgment.*—Where a person had taken a benefit under an order in an action to which he was not a party, it was held, that though he was not bound by the judgment, he was not entitled in good faith and equity to raise the same question that had been decided in that action.—*In re Iart; Wilkinson v. Blades*, L.R. [1896] 2 Ch. 788; 75 L.T. 175.
- (iii.) **C. A.**—*Joinder as Plaintiff—"Own Consent in Writing"—Unauthorised Joinder—Consequences.*—A consent to being joined as plaintiff in an action must be signed by the person consenting and not by his solicitor. If he has been joined as plaintiff without his own signature, a stay of all proceedings in his name will be directed, and his costs and those of the defendant also will be ordered to be paid by the solicitor who made the improper joinder.—*Fricker v. Van Grutten*, L.R. [1896] 2 Ch. 649; 75 L.T. 117.

#### Principal and Agent:—

- (iv.) **Q. B. D.**—*Practice—Joinder of Defendant—O. xvi., rr. 7 & 11.*—In an action against an agent in this country for breach of warranty of authority a principal, resident out of the United Kingdom can be joined.—*Bennetts & Co. v. McIlwraith & Co.*, L.R. [1896] 2 Q.B. 464; 75 L.T. 145.

#### Probate:—

- (v.) **P. D.**—*Lost Will—Proof—Consent of Next-of-Kin.*—The consent of the next-of-kin is required to the proof on motion of the contents of a lost will.—*In the goods of Pearson*, L.R. [1896] P. 289.
- (vi.) **P. D.**—*Administration with Will annexed—Limited Company as Surety.*—The Court granted administration with will annexed to the manager of a limited company who were appointed executors and trustees of a will, and accepted the company as sole surety.—*In the goods of Hunt*, L.R. [1896] P. 288.

#### Public Health:—

- (vii.) **Q. B. D.**—*Drain or Sewer—Liability for Repair—Public Health Act, 1875, ss. 15, 41, 299—Amendment Act, 1890, s. 19—Hastings Improvement Act, 1885, s. 148.*—A sanitary authority refused to repair a drain which carried into a public sewer the drainage of a block of houses belonging to one owner. *Held*, that the introduction of sect. 41 of the Act of 1875 into a local Act does not remove the liability of the authority under sect. 15 to repair sewers, and as the authority in this case had taken no proceedings under sect. 41, they were bound to repair the drain. The proper remedy to enforce such an obligation on a sanitary authority is by complaint to the Local Government Board under sect. 299 of Public Health Act, 1875, and not by mandamus.—*Reg. v. Mayor, &c., of Hastings*, L.R. [1897] 1 Q.B. 46; 75 L.T. 377.
- (viii.) **C. D.**—*Expenses—Apportionment—Dispute—"Prepaid" Letter—Public Health Act, 1875, ss. 41, 94, 257 & 267—Amendment Act, 1890, s. 19.*—Where there was no evidence that a letter, said to have been sent disputing an apportionment, had been, as required by sect. 267 of the Public Health Act, 1875, prepaid, it was held that the dispute was bad, and that the plaintiffs were entitled under sect. 257 of the Act to

a charge on the land of the defendant for the apportioned amount of expenses incurred by them under sect. 41 of the Act of 1875, and under sect. 19 of the Amendment Act.—*Walthamstow Urban District Council v. Henwood*, L.R. [1897] 1 Ch. 41; 75 L.T. 375.

**Railway:—**

- (i.) **Q. B. D.**—*Fences—Accommodation Works—Liability of Company—Limit of Time*—*Railway Clauses Act*, 1845, ss. 68, 73.—Sect. 68 of *Railway Clauses Act*, 1845, imports an obligation on a railway company to make and maintain sufficient fences for separating the line from adjoining lands, and sect. 73 does not relieve from this obligation where the fences have not been put up within the period named, but only relieves from a claim for additional accommodation works where those afforded have not been shown to be insufficient within the prescribed time.—*Dixon v. Great Western Railway*, 75 L.T. 245.
- (ii.) **C. A.**—*Powers to Take Land—Severance—Accommodation Works—Compensation*—*Manchester, Sheffield and Lincolnshire Railway Act*, 1893, s. 42—*Railway Clauses Act*, 1845, s. 68.—The private Act of a railway company incorporated the *Lands Clauses Act* and part 1 of the *Railway Clauses Act*, and contained a section empowering the company to take such part only as they might require of a certain manufactory if severance could be effected without material detriment to the entire property. The company proposed to carry their line by a viaduct over the access to this manufactory, and undertook in an arbitration to grant a perpetual right of way under the viaduct, by which practically the existing access to the manufactory would be continued. *Held*, that the company had power to grant a perpetual right of way; that they were liable under sect. 68 of the Act of 1845 to make good the interruption to the use of the land and that the umpire should take these two points into his consideration in deciding whether the severance would be a "material detriment" to the rest of the property. *Held*, also, that the Court had jurisdiction over the costs of an appeal in a special case. *Holliday v. Mayor of Wakefield* held not now to be a binding authority.—*In re An Arbitration between Gonty and the Manchester, Sheffield and Lincolnshire Railway*, L.R. [1896] 2 Q.B. 439; 75 L.T. 239.

**Rating:—**

- (iii.) **Q. B. D.**—*Lighthouse—Rateable Value*.—Commissioners of a harbour and docks were empowered by Act of Parliament to levy dues for the maintenance of a lighthouse erected by them. *Held*, that the rateable value of the lighthouse was to be based on its structural value only.—*Commissioners and Trustees of the Port of Lancaster v. Overseers of the Parish of Barrow-in-Furness*, 75 L.T. 358.
- (iv.) **C. A.**—*Floating Pontoon*.—A railway company owned a pontoon which by leave of the owner of a pier was moored thereto in a tidal river, and at low water rested on the ground. The company drove a pile into the river bed as a fender to the pier. *Held*, that the company were not in occupation of the land and were therefore not liable to be rated.—*Manchester, Sheffield, and Lincolnshire Railway Co. v. Kingston-upon-Hull*, 75 L.T. 127.
- (v.) **C. A.**—*Distress—Receiver and Manager*—43 *Eliz.*, c. 2, s. 2—*Poor Rate Assessment Act*, 1869, s. 16.—Distraint for rates can be made on the goods of a company, of whose property a receiver and manager has been appointed under an order which does not direct the company to give up possession.—*The North of England Trustee Debenture and Assets Corporation, Limited v. Marriage, Neave & Co., Limited; re Marriage, Neave & Co.*, L.R. [1896] 2 Ch. 663; 75 L.T. 169.



**Revenue:—**

- (i.) **H. L.**—*Income Tax—Deductions—Money Expended for Purpose of Trade.*—Judgment of Court below (see Vol. 21, p. 47 (i.)) affirmed.—*Royal Insurance Co. v. Watson*, 75 L.T. 334.
- (ii.) **Q. B. D.**—*Foreign Firm with English Trade Mark and Goodwill—Agreement Stamp Act, 1891, s. 59 (1).*—A limited company, by agreement made in England, bought the work and goodwill of a company in America supplying goods for consumption in England, and having a registered trade mark here and an office in London. *Held*, that the English trade mark and goodwill were "property" within sect. 59, sub-sect. 1, of the Stamp Act, and that the agreement was liable to *ad valorem* stamp duty.—*Brooke v. Commissioners of Inland Revenue*, L.R. [1896] 2 Q.B. 356.
- (iii.) **H. L.**—*Income Tax—Exemption—Literary and Scientific Institution—Public Library—Public Libraries Act, 1892—Income Tax Act, 1842, s. 61, r. 6.*—Decision of Court of Appeal (see Vol. 20, p. 117 (iv.)) reversed (the Lord Chancellor dissenting).—*Mayor of Manchester v. McAdam*, 75 L.T. 229.
- (iv.) **Q. B. D.**—*Foreign Marketable Securities—Stamp Act, 1891, s. 82.*—The business of an English company was purchased by, and transferred to, an American company, with an arrangement that the debentures of the old company should be exchanged for debentures on the American company, payable in Chicago. *Held*, that the American debentures were not "made or issued in the United Kingdom," or "offered for subscription," or "given or delivered to a subscriber in the United Kingdom," within sect. 82 of the Stamp Act, and were therefore not liable to duty as marketable securities of a foreign company.—*The Chicago Railway Terminal Elevator Co. v. The Commissioners of Inland Revenue*, 75 L.T. 157.

**Riparian Owner:—**

- (v.) **Q. B. D.**—*Bed of Thames—Dredging Sand—Thames Conservancy Act, 1894.*—The foreshore of the tidal part of the Thames is not the "bed" within sect. 87 of the Thames Conservancy Act, 1894, and the owner of such foreshore can dredge sand from it without the licence of the Conservators.—*Pearce v. Bunting*; *Reg. v. Justices of Kent*; *e. p. Pearce*, L.R. [1896] 2 Q.B. 360; 75 L.T. 184.

**Scottish Law:—**

- (vi.) **H. L.**—*Succession—Heirs Female.*—"Heirs female" in Scottish law means heirs portioners who take as a class.—*Mackenzie and Others v. The Duke of Devonshire*, L.R. [1896] A.C. 400.
- (vii.) **H. L.**—*Testing Clause in Marriage Contract.*—There is no legal effect in a declaration in the testing clause of a deed which purports to qualify provisions in the body of the deed.—*Blair and Another v. Assets Co., Ltd.*, L.R. [1896] A.C. 409.

**Settled Land:—**

- viii.) **C. D.**—*Money to be Invested in Land—Permanent Repairs—Tenant for Life and Remainderman.*—Where personal property was bequeathed to trustees for the purchase of land to be limited, like realty devised to them, to a tenant for life with remainder to his son in tail male with remainder over, with power to the trustees to postpone investment, and to apply any of the personalty for the benefit of the estate, it was *held* that the Court could not direct any part of the capital to be applied to the permanent repairs of the mansion house. *In re De Teissiers Settled Estates* followed.—*In re Lord De Tabley*; *Leighton v. Leighton*, 75 L.T. 328.

- (i.) **C. D.**—*Mansion House—Tenant for Life*.—Where a testator had directed the sale of a mansion house on the death of the life tenant, it was held that the tenant for life could sell at his discretion.—*In re Wortham's Settled Estates and the Settled Land Acts*, 75 L.T. 298.

**Ship :—**

- (ii.) **H. L.**—*Collision—Special Contract—Merchant Shipping Act, 1862, s. 54*.—The owner of a yacht is liable for the consequences of violating a rule which he has bound himself to observe during a race, and the limitation of liability in sect. 54 of the Merchant Shipping Act is excluded.—*Clarke v. Lord Dunraven; The Satanita*, 75 L.T. 337.
- (iii.) **P. D.**—*Freight—Damage—Inherent Vice*.—A charter-party contained a provision for payment of freight "less value of cargo short delivered or damaged not covered by the preceding act of God clause." Some of the cargo was damaged owing to inherent vice. Held, that the consignees were liable for the entire freight as the deduction applied only to damage from causes for which the shipowner was responsible.—*Eyre, Evans & Co. v. Watsons; The Barcore*, L.R. [1896] P. 294; 75 L.T. 168.

**Solicitor :—**

- (iv.) **C. D.**—*Costs—Lease in Consideration of Rent a Premium—General Order under Solicitors Remuneration Act, 1881, sched. 1, part 2, r. 5*.—For a lease at a rent and in consideration of a premium the lessor's solicitor is not entitled to a fee for negotiation in addition to the scale charge calculated on the rent and to the scale charge for deducting title calculated on the premium.—*In re Horn and Francis*, L.R. [1896] 2 Ch. 797; 75 L.T. 370.

**Theatre :—**

- (v.) **Q. B. D.**—*Licence Under Conditions—Theatre Regulation Act, 1843, s. 5, 5 and 6 Will. IV., c. 39, s. 7*.—A county council can in the exercise of its judgment make it a condition to the grant of a licence for the public representation of stage plays, that the grantee shall not apply for an excise licence for the premises under sect. 7 of the Act of Will. IV.—*Reg. v. County Council of West Riding of Yorkshire*, L.R. [1896] 2 Q.B. 386; 75 L.T. 252.

**Trust :—**

- (vi.) **C. D.**—*Marriage Settlement — "Next-of-Kin in Blood" to Wife—Construction*.—By a marriage settlement there was an ultimate trust for "the persons who shall be next-of-kin in blood" to the wife "at the time of her decease in case she had so died intestate and unmarried." Held, that the words imported a reference to the Statute of Distributions, and that the children of the deceased brothers and sisters of the wife, as well as her living brothers and sisters, were entitled to participate.—*In re Gray's Settlement; Akers v. Gray*, L.R. [1896] 2 Ch. 802; 75 L.T. 407.
- (vii.) **C. A.**—*Depreciation in Authorised Securities—Liability*.—To throw on to trustees a loss sustained by a fall in value of securities authorised by the trust, want of ordinary prudence on the part of the trustees must be proved, otherwise the loss must be borne by the *cestius que trust*.—*In re Chapman; Cocks v. Chapman*, L.R. [1896] 2 Ch. 763; 75 L.T. 196.

**Vendor and Purchaser :—**

- (i.) **C. D.—Agreement—Names of Parties—Statute of Frauds, s. 4—Conditional or Absolute Acceptance?**—A defendant wrote to a firm of auctioneers: "I hereby offer the sum of £— for . . . and if my offer is accepted, I will pay deposit and sign contract on the auction particulars;" and they replied: "On behalf of our client, Mrs. M. A. F., we accept your offer for —, subject to contract as agreed." *Held*, that as these letters contained the names of the contracting parties, they satisfied the Statute of Frauds in that respect, and that the acceptance was absolute, notwithstanding the words "subject to contract as agreed."—*Filby v. Hounsell*, L.R. [1896] 2 Ch. 737; 75 L.T. 270.

**Weights and Measures :—**

- (ii.) **Q. B. D.—Sale of Coal—Weights and Measures Act, 1889, s. 21.**—In a delivery of coals, if the whole specified quantity has been delivered, the seller cannot be convicted under sect. 21, because some sacks contained less than 2 cwt., the quantity which, according to the ticket supplied by him under the Act, each sack was stated to contain.—*Godfrey v. Radford*, 75 L.T. 224.

**Will :—**

- (iii.) **C. D.—Construction—Tenant for Life and Remainderman—Trust for Sale with Power to Postpone—Trustees not agreed—Works executed under Notice by Local Authority charged to Corpus—Public Health (London) Act, 1891, ss. 11, 117, 121.**—A testator gave real and leasehold estates upon trust for sale, but declared that it should not be necessary for the trustees to sell any part during the life of his wife unless she requested it. *Held*, that there was a discretionary power to postpone, and as the trustees were not agreed as to the advantage of a sale the absolute trust took effect. *Held*, also that having regard to sects. 11, 117 and 121 of the Public Health Act, 1891, the expenses of sanitary works executed by the trustees pursuant to notice by the local authorities were chargeable upon the corpus.—*In re Lever; Cordwell v. Lever*, L.R. [1897] 1 Ch. 32; 75 L.T. 383.
- (iv.) **P. D.—Codicils Written on Revoked Will—Mistake Rectified.**—Where two codicils had by mistake been written on the last page of a revoked will, the Court *held* that words in the codicils misdescribing the revoked will as the last will should be omitted from probate, and that probate should be granted of the codicils so amended together with the last will.—*In the goods of Northing Snowden*, 75 L.T. 279.
- (v.) **C. D.—Construction—Gift to Children—Maintenance—Vesting.**—A testator left the residue of his estate in trust for ultimate division equally between his children who attained 21, the issue of a deceased child taking the parents' share. The trustees had a discretionary power to sell and re-invest and to apply a presumptive share of a child or grandchild to its maintenance during minority. *Held*, that the gift to children was contingent on their attaining 21, that the power to apply to maintenance the income of a presumptive share did not import a vested interest in the children, and therefore that children dying in minority took nothing, and that the testator's estate was not converted.—*In re Wintle; Tucker v. Wintle*, L.R. [1896] 2 Ch. 711; 75 L.T. 207.

# Quarterly Digest

OF

## ALL REPORTED CASES

IN THE

### Law Times and Law Reports

FOR JANUARY, FEBRUARY, AND MARCH, 1897.

By THOMAS J. BARNES, of the Middle Temple,  
Barrister-at-Law.

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## D I G E S T .

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Where a case has already been given in the Digest for a preceding quarter, the additional report is given after the name of the case, with a reference to the volume of the Digest in which it first appeared, the thick number being the number of the volume.

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### Administration:—

- (i.) **P. D.**—*Testatrix of French domicile—Will in English form.*—Where a will in English form was made under a power of appointment by a testatrix of English domicile of origin, but married to a Frenchman, and domiciled in France, the Court granted administration with the will annexed. In the goods of Alexander, 2 L.T. 56, and in the goods of Hallyburton, L.R. 1 P. & D. 90, commented on.—*In the goods of Mary Hamilton Huber, deceased*, 75 L.T. 453.
- (ii.) **C. D.**—*Assets in South Australia—Colonial duties.*—A testator with property in England and South Australia, left in trust an equal share of his residuary estate to each surviving child of him for life, with remainder to the children of such child; and gave power to the trustees to cultivate his real and leasehold estates in Australia till sale. *Held*, that the colonial duties were part of the costs of realisation, and therefore payable out of the testator's general assets before distribution.—*In re Maurice; Brown v. Maurice*, 75 L.T. 415.

### Adulteration:—

- (iii.) **Q. B. D.**—*Beeswax—Sale of Food and Drugs Act, 1875 (38 & 39 Vict., c. 63), s. 6.*—Beeswax sold by a grocer is not a "drug."—*Fowle v. Fowle*, 75 L.T. 514.

### Arbitration:—

- (iv.) **C. A.**—*Special Case—Arbitration Act, 1889 (52 & 53 Vict., c. 49), s. 10.*—The Court can order a case to be stated under sect. 19, though the

arbitrator has not intimated which way he intends to decide the point of law.—*In re An Arbitration between Spiller and Baker, Limited, v. Leetham and Sons*, L.R. [1897] 1 Q.B. 312; 76 L.T. 35.

### Attachment:—

- (i.) **P. D.**—*Divorce—Order to Deliver up Child—Removal out of Jurisdiction—Order for Attachment.*—In a divorce suit, the custody of a child, who was not to be removed out of the jurisdiction, was given to the petitioner, but the child was removed out of the jurisdiction and retained by the respondent. On an *ex parte* application by the petitioner, a writ of attachment was ordered to issue against the respondent.—*Favard v. Favard*, 75 L.T. 664.

### Bankruptcy:—

- (ii.) **C. D.**—*Beneficed Clergyman—Sequestration—Discharge of Bankrupt—Continuance of Sequestration—Sequestration Act, 1871.*—Where a bankrupt rector had obtained his discharge on paying 8/9 in the £, it was held that the discharge did not entitle him to an injunction to restrain the trustee in bankruptcy from receiving any further income from the bankrupt's benefice under a sequestration, or to an order to the trustee to take steps to have the sequestration relaxed. (*See also* Vol. 22, p. 12, i.)—*Lawrence v. Adams*, 75 L.T. 410.
- (iii.) **C. A.**—*Mortgage of future payments—Bankruptcy of Mortgagor—Rights of Trustee—Bankruptcy Act, 1883.*—Decision of the Court below (*see* Vol. 22, p. 4, i.) affirmed.—*Wilmot v. Alton*, L.R. [1897] 1 Q.B. 17; 75 L.T. 447.
- (iv.) **C. A.**—*Retired Officer of Army—Appropriation of part of Pension—Bankruptcy Act, 1883, ss. 1 & 2.*—An officer who voluntarily retired from the army received an annuity as "gratuity or retired pay." On his bankruptcy it was held that the Court could, under sub-sect. 2 of sect. 53, order part of this annuity to be paid to the trustee in bankruptcy for the benefit of creditors.—*In re Ward; e. p. Ward*, L.R. [1897] 1 Q.B. 266; 76 L.T. 37.
- (v.) **Q. B.**—*Composition—Subsequent Bankruptcy—Determination of Deed—Rights of Creditors—Bankruptcy Act, 1869, ss. 125, 126—Statute of Limitations.*—In 1881, a debtor made a composition with his creditors secured by deed of inspectorship which contained a clause empowering the inspectors to terminate the deed in the event of the debtor's bankruptcy; and on such termination the creditors were to have their original rights to the full debt. In 1889 the debtor became bankrupt, but the creditors who were parties to the deed took no steps. In 1896 the surviving inspector declared the deed at an end. *Held*, that the surviving inspector having a power coupled with an interest, could terminate the deed; that the creditors who were parties to the deed had a right of proof in the bankruptcy; and that the Statute of Limitations did not begin to run till the deed was determined.—*In re Stock; e. p. Amos*, 75 L.T. 422.

### Bill of Exchange:—

- (vi.) **H. L.**—*Cheque obtained by Fraud—Non-existing Payee—Forgery—Holder in due course—Bills of Exchange Act, 1882 (45 & 46 Vict., c. 61), s. 7, sub-s. 3.*—Decision of Court below (*see* Vol. 21, p. 3, v.) affirmed. *Bank of England v. Vagliano*, 64 L.T. 353; L.R. [1891] A.C. 107, followed.—*Clutton v. Attenborough*, L.R. [1897] A.C. 90; 75 L.T. 556.
- (vii.) **C. D.**—*Crossed Cheque on London Branch of French Bank—Collected in France—Indorsement—Liability—Bills of Exchange Act, 1882, ss. 60, 80, 82.*—A crossed cheque drawn to order on the London branch of a Paris Bank was presented at the Paris office, and transmitted

thence to the London branch. On advice from the London office that the cheque was right, and that the sum for which it was drawn had been credited to the Paris office, that amount was paid in Paris to the person who presented the cheque. He was not a customer of the Bank, and it turned out that he was not the rightful owner of the cheque, and that the endorsement on the cheque was a forgery. *Held*, that the Bank was liable for the value of the cheque to the true owner.—*Lacave & Co. v. The Crédit Lyonnais*, L.R. [1897] 1 Q.B. 148; 75 L.T. 514.

**Bill of Sale:—**

- (i.) **C. A.**—*Consideration under £30, and not "truly set forth"*—*Bills of Sale Act, 1878—Amendment Act, 1882* (45 & 46 Vict., c. 43), ss. 8 & 12.—A promissory note for £14 8s. 4d., repayable by instalments of 11s. 4d. weekly, was given in consideration of a sum of £10. After one instalment had been paid, and before the second was due, the maker of the note gave the payee a bill of sale in consideration of £13 12s. "now owing," and of £16 8s. in cash. *Held*, that the bill was void, as the consideration was not truly set forth, and was under £30.—*Darlow v. Bland and Others*, L.R. [1897] 1 Q.B. 125; 75 L.T. 537.
- (ii.) **C. B. D.**—"Plant" "brought upon a Place"—*Bill of Sale Act, 1878, s. 5—Amendment Act, 1882, ss. 4, 6, sub-s. 2.*—Two horses included in a bill of sale, and specifically described, were parted with by the grantor, who substituted for them two other horses, and these he subsequently sold to a purchaser who had no knowledge of the bill of sale. In an interpleader action it was *held*, that the new horses were not "plant," nor were they brought upon a place in substitution for any of the like plant specifically described within the meaning of sect. 6 of the Act, and that the bill of sale was void as to the two horses, under sect. 4.—*London and Eastern Counties Loan and Discount Co., Limited v. Crease*, L.R. [1897] 1 Q.B. 442; 76 L.T. 87.

**Brawling:—**

- (iii.) **Q. B. D.**—*Liability of Clergyman* (23 & 24 Vict., c. 32, s. 2).—The liability of "any person" for riotous behaviour in a church or churchyard, applies to the incumbent of the church as well as to a layman.—*Vallancey v. Fletcher*, L.R. [1897] 1 Q.B. 265; 76 L.T. 201.

**Civil Servant:—**

- (iv.) **C. A.**—*Appointment "during pleasure"*—*Reduction in Rank—No Cause of Action—Inland Revenue Regulation Act, 1890, s. 4, sub-s. 3.*—Where a supervisor of Inland Revenue, who had been appointed "during the pleasure of the Commissioners," was under sect. 4, sub-sect. 3, of the above Act reduced in rank for a refusal to comply with an order which he considered was not within his duties, it was *held* that he had no cause of action, and an order of a Judge in Chambers to stay an action commenced was upheld.—*Worthington v. Robinson, and Others*, 75 L.T. 446.

**Colonial Law:—**

- (v.) **P. C.**—*Canada—British North America Act, 1867* (30 Vict., c. 8), s. 92, sub-ss. 2 and 9—*Direct Taxation—Brewers and Distillers Licences.*—A uniform fee required by the Liquor Licence Act of Ontario from all brewers and distillers in the Province is "direct taxation" within sect. 92 of the British North America Act, 1867. *Bank of Toronto v. Lambe* (L.R. 12 App. Cases 575; 57 L.T. 377) followed.—*The Brewers and Malsters Association of Ontario v. Attorney-General for Ontario*, 76 L.T. 61.

- (i.) **P. C.**—*Canada—Dominion Act, 1867—Annuity to Indian Tribes—Liability of Province.*—A treaty of 1850 provided for the payment, by the old Dominion of Canada to certain Indian tribes in consideration for lands, of an annuity which, in events which happened, was to be increased. The Dominion Act of 1876 divided the province of Canada into the provinces of Quebec and Ontario. The lands, the subject of the treaty, were in the latter province, but by the terms of the Act the Dominion of Canada was to be liable for the original annuity. *Held*, that the Dominion, and not the province of Ontario, was liable for the additional annuity.—*Attorney-General of Canada v. Attorney-General of Ontario; Attorney-General of Quebec v. Attorney-General of Ontario*, 75 L.T. 522.
- (ii.) **P. C.**—*British Columbia—Insolvency—Fraudulent Preference—Collusion—Consolidated Statutes of British Columbia, c. 51, s. 1.*—By the above statute, a confession of judgment is void if given by an insolvent voluntarily or in collusion with a creditor with intent to create a preference, or to delay or defeat other creditors. *Held*, that pressure by a creditor might be an answer to a case of fraudulent preference, but not to a case of collusion. *Martin v. Macalpine* (8 Ontario Appeal Rep. 675) approved.—*Edison General Electric Company v. Westminster and Vancouver Tramway Co. and the Bank of British Columbia*, 75 L.T. 438.
- (iii.) **P. C.**—*Victoria—Administration and Probate Act, 1890—Will—Probate—Face and Market Value of Securities—Shares in Bank under Reconstruction.*—Where deposit receipts of a bank are at a discount, the market price may be taken as the value for purposes of probate. Sums payable on shares in the reconstruction of a bank are debts of a deceased shareholder under sect. 97 of the Colonial Administration and Probate Act of 1890.—*The Master in Equity v. Pearson and Others*, 75 L.T. 526.

#### Commons :—

- (iv.) **Q. B. D.**—*Gravel from Common for repair of Roads—Jurisdiction of Justices—Commons Act, 1876 (39 & 40 Vict., c. 56), s. 20.*—Under sect. 20 of the Commons Act, 1876, justices in petty session have jurisdiction to grant or to refuse an order for taking materials for the repair of parish roads from a common.—*The Conservators of Hayes Common v. Bromley Rural District Council*, L.R. [1897] 1 Q.B. 321; 76 L.T. 51.

#### Company :—

- (v.) **C. A.**—*Application for Shares—Underwriting Letter—Condition Precedent—Companies Act, 1862 (25 & 26 Vict., c. 89), s. 35.*—By an underwriting letter for shares in a company it was agreed that the underwriter would, whenever called upon, lodge with the promoters an application for shares, and that if he failed to do so, the promoters, notwithstanding his repudiation, should be authorised to apply for, and the directors be authorised to allot to him the agreed shares. *Held*, affirming decision of Chitty, J., that even assuming that the offer of the underwriter was accepted by the promoters before repudiation, a request to him to apply for shares was a condition precedent to an application by them. *Held*, by Chitty, J., that the promoters, by retaining the underwriting letter without objection to it, signified acceptance of its terms.—*In re The Bulfontein Sun Diamond Mine, Limited*; *e. p. Coz, Hughes and Norman*, 75 L.T. 669.
- (vi.) **C. D.**—*Winding-up—Private Company—Paid-up Shares—Consideration—Misfeasance—Contributories—Practice—Companies Act, 1867 (30 & 31 Vict., c. 131), s. 25—Companies (Winding-up) Act, 1890 (53 & 54 Vict., c. 63), s. 10—Companies (Winding-up) Rules, 1890, rr. 83-87.—The*

owners of a business turned it into a limited company, in which they became the only shareholders receiving paid-up shares on the conversion. Two of them, on behalf of the vendors, made with the company an agreement, which was filed before the issue of any shares, fixing the sale price of certain items of property transferred to the company at a much higher sum than that at which the same items were entered subsequently in the books of the company. On the winding-up, the Official Receiver claimed from the two signatories on behalf of the vendors the difference between these two valuations as damages for their misfeasance as officers of the company, and alternatively sought to make them liable for the amount as unpaid on their shares. On a preliminary objection, it was *held*, that though the joinder of the alternative claims might be inconvenient, it was not embarrassing, and that the claim to make the two vendors contributories was not improper; but that as there were no damages proved, the claim for misfeasance failed, and the claim for contribution failed, on the ground that the Official Receiver had not made out a case to induce the Court to go behind the registered contract.—*In re E. J. Wragg, Limited*, 75 L.T. 652.

- (i.) **C. D.**—*Practice—Extending Objects of Company—Order on Petition—Advertising—Companies Acts, 1862 to 1890—Companies (Memorandum of Association) Act, 1890* (53 & 54 Vict., c. 62), s. 1, sub-s. 3.—There is no established practice as to advertising orders under sect. 1, sub-sect. 3 of the Companies (Memorandum of Association) Act, 1890, but the Court can dispense with advertisements of such orders.—*In re The Lancaster Banking Co., Limited*, 75 L.T. 647.
- (ii.) **C. D. & C. A.**—*Winding-up—Mining Lease—Distress—Validity against Debenture Holders—Seizure of Chattels on Neighbouring Land—Bills of Sale Act, 1878* (41 & 42 Vict., c. 31), ss. 4 & 6—*Amendment Act, 1882* (45 & 46 Vict., c. 43), ss. 3 & 8—*Companies Act, 1862*, ss. 85, 87, 138.—The day before a mining company confirmed a resolution to wind-up voluntarily the landlord distrained for rent and seized under powers of a lease chattels of the company not within the demise. *Held*, reversing the decision of the Court below, that the power was not a "licence to take possession of personal chattels" within the meaning of sect. 4 of the Bills of Sale Act, and was not invalidated by being unregistered (*Pulbrook v. Ashby* considered). A distress made before a winding-up and before the appointment of a receiver is valid against debentures with a floating charge on the chattels of the company. *Biggerstaff v. Rowatt's Wharf* (Vol. 22, p. 7, vii.), and *in re The Opera, Limited*, L.R. [1891] 3 Ch. 260; 65 L.T. 371 applied.—*In re the Roundwood Colliery Co., Limited*; *Lee v. the Roundwood Colliery*, L.R. [1897] 1 Ch. 875; 75 L.T. 508 & 641.
- (iii.) **H. L.**—"One Man" Company—*Indemnity—Companies Acts.*—A boot manufacturer, solvent at the time, converted his business into a limited company, he and six members of his family subscribing the memorandum of association for one £1 share each. The nominal capital of the company was £40,000 in £1 shares, and the purchase money was fixed at £38,782, payable £10,000 in debentures and the remainder in cash. The vendor subscribed for 20,000 shares and the funds which came into the business were paid to him and returned to the company until the 20,000 shares had been by this means fully paid up. The greater part of the rest of the cash portion of the purchase money was applied to the discharge of liabilities incurred before the conversion of the business. No shares beyond the 20,007 were issued. In a few months the company was wound-up, the debentures absorbing all the assets, leaving the trading debts unpaid. *Held*, reversing the decision of the Court of Appeal, that as the company was constituted in accordance with the Statute, the motive (in the absence of direct



fraud) of those who took part in its promotion was not a subject for enquiry by the Court; that the company was not the agent or the trustee of the vendor, and therefore that he was not liable to indemnify it against its creditors. *Erlanger v. New Sombrero Phosphate Co.* distinguished. See also Vol. 21, p. 7 (i.).—*Salomon v. Salomon & Co., Limited*, and *Cross Appeal*, L.R. [1897] A.C. 22; 75 L.T. 426.

- (i.) **C. A.**—*Winding-up—Opposition of Majority of Creditors—Discretion of Court.*—A winding-up order was made on the petition of a debenture holder of a company, notwithstanding that the petition was opposed by the great majority of the debenture holders who were practically the only creditors, and that evidence was given that there were no tangible assets. *Held*, that as the official receiver was not satisfied that there were no assets to be reached in a winding-up the order ought not to be disturbed.—*In re The International Commercial Co., Limited*, 75 L.T. 639.
- (ii.) **C. A.**—*Winding-up—Transfer of Shares—Change of Status—Companies Act, 1862.*—Decision of Court below (see Vol. 22, p. 42, i.) reversed.—*In re The National Bank of Wales, Limited*, L.R. [1897] 1 Ch. 298; 76 L.T. 1.
- (iii.) **H. L.**—*Debentures—Floating Security—When Attached.*—Decision of Court below (see Vol. 21, p. 6, iii.) affirmed.—*Government Stock Investment Co. v. The Manila Railway Co., Limited*, L.R. [1897] A.C. 81; 75 L.T. 558.
- (iv.) **C. D.**—*Liquidation—Debentures—Claim on Uncalled Capital.*—"The undertaking and all the property whatsoever and wheresoever both present and future" of a company which had power to borrow on any of its property, including uncalled capital, was charged as security for money owing on debentures. On the company going into liquidation it was *held* that the debentures were not a charge on the capital uncalled at the commencement of the winding-up.—*In re Streatham and General Estates Co., Limited*, L.R. [1897] 1 Ch. 15; 75 L.T. 574.
- (v.) **C. D.**—*Debenture Holders—Right to Take Copies of Register of Mortgages—Companies Act, 1862, ss. 25 & 43—Companies Clauses Acts, 1845, ss. 9, 10, 36, 45, & 119; and 1863, s. 28.*—The right of inspection of the register of mortgages which sect. 43 of the Companies Act, 1862, gives to a creditor or member of a company includes the right to take copies of entries in the register.—*Nelson v. Anglo-American Land, Mortgage and Agency Co., Limited*, L.R. [1897] 1 Ch. 130; 75 L.T. 482.
- (vi.) **C. D.**—*Winding-up—Misfeasance—Auditors—Companies (Winding-up) Act, 1890, s. 10.*—Chartered accountants who have acted as auditors of a company, though not formally appointed as required by the Articles of Association, are properly joined as respondents to a summons for misfeasance under sect. 10 of the Winding-up Act, 1890. *Coventry and Dixon's case*, 42 L.T. 559; L.R. 14 Ch. Div. 660 applied; *in re London and General Bank*, Vol. 20, p. 68 (vii.); and *in re Cotton Mills Co., Vol. 21, p. 57 (iii.)*, considered.—*In re The Western Counties Steam Bakeries and Milling Co., Limited*, 75 L.T. 648.
- (vii.) **C. A. & C. D.**—*Right of Creditor to Winding-up Order ex debito iustitie—Assets insufficient to meet Debentures—Companies (Winding-up) Act, 1890.*—Having regard to the decision in *Solomon v. Solomon & Co., Limited* (see above) where all the assets of a company would be absorbed by debentures which have been validly issued to the vendor, a winding-up order cannot be obtained by unsecured creditors.—*In re The London Health Electrical Institute, Limited*, 75 L.T. 658, and 76 L.T. 98.

- (i. **C. D. & C. A.**—*Winding-up—Substratum of Business gone—Fraudulent Purpose—Companies Act, 1862 (25 & 26 Vict., c. 89), s. 79, sub-s. 5.*—A limited company had been restrained from using the title under which it traded unless it added to it a statement that the company was distinct from an old established firm of the same name. On a petition being presented for winding-up on the ground, *inter alia*, that it was a bubble company, it was held that a material part of the substratum of the company's business having gone, it was "just and equitable" on a balance of facts shown, that a winding-up order should be made.—*In re Thomas Edward Brinsmead & Sons, Limited*, L.R. [1897] 1 Ch. 45 and 406; 75 L.T. 585, and 76 L.T. 100.

**Contract:—**

- (ii.) **C. D.**—*Agreement for Lease—Parol Evidence to Negative Agreement.*—A document in the form of an agreement for the lease of a house was signed by the proposing tenant, and subsequently, but without the intention of contracting, by the other party, and deposited by him with his solicitor with instructions to require a further condition. Held, that parol evidence was admissible to shew that there was no agreement.—*Pattle v. Hornibrook*, L.R. [1897] 1 Ch. 25; 75 L.T. 475.
- (iii.) **C. D.**—*Contract founded on Letters—Uncertainty of Date—Specific Performance.*—A purchaser wrote that he had "decided to accept" an offer made by letter of a freehold at the sum asked, but that he should like to know from what time the vendor wished the purchase to date. Held, to be a completed contract.—*Armstrong v. Hughes*, 75 L.T. 487.
- (iv.) **C. A.**—*Personal Services—Agreement to "act exclusively for" Employer.*—An agreement to "act exclusively for" an employer does not, in the absence of a negative covenant, entitle him to an injunction to restrain the servant from entering into the employment of other persons.—*The Mutual Reserve Fund Life Association v. The New York Life Insurance Co. and Harvey*, 75 L.T. 528.

**Copyhold:—**

- (v.) **C. A.**—*Heriots.*—A beast never within the manor may be seized for a heriot (*see also* Vol. 22, p. 8, vi.)—*Western v. Bailey*, L.R. [1897] 1 Q.B. 86; 75 L.T. 470.

**Copyright:—**

- (vi.) **C. D.**—*Registration—Validity—Copyright Act, 1842 (5 & 6 Vict., c. 45), s. 13—Fine Arts Copyright Act, 1862 (25 & 26 Vict., c. 68), ss. 1, 4.*—Drawings for a trade circular which was prepared by the managing director of a limited company, were paid for, and used by the company. He was registered as proprietor of the copyright in the catalogue and in the drawings; but there was no writing vesting the copyright in him. On an action by him and the company as co-plaintiffs to restrain infringement, held that he had acted as agent of the company, and that the registration was bad under both the Copyright Acts; that even if he were entitled to be registered as proprietor of the copyright in the catalogue, this would not protect the drawings; and that the action was not maintainable. London Printing and Publishing Alliance v. Cox, 65 L.T. 60; L.R. [1891] 3 Ch. 291, followed.—*Petty v. Taylor*, L.R. [1897] 1 Ch. 465; 75 L.T. 545.

**County Court:—**

- (vii.) **Q. B. D.**—*Execution—Claim to Goods—Sale—Title of purchaser—County Courts Act, 1888 (51 & 52 Vict., c. 43), s. 156.*—Where goods which had been seized by a bailiff in execution of a County Court judgment

are claimed by some one other than the judgment debtor, the ways in which the claimant can arrest sale of the goods are stated in sect. 156 of the County Court Act, 1888. If the claimant should not perform any of the conditions, the bailiff must sell the goods; the purchaser without notice of the claim will have a good title.—*Goodlock v. Cousins*, L.R. [1897] 1 Q.B. 348; 76 L.T. 86.

### Criminal Law:—

- (i.) **Q. B. D.**—*Pleading—Coroner's Inquisition.*—A coroner's inquisition stated the cause of a person's death to be injury from falling into a quarry, and that by the neglect of three persons to fence the quarry the deceased "fell therein, and therefore the said" (three persons) "did feloniously kill" the deceased. *Held*, that the inquisition was bad, and might be quashed, as the qualification of the finding of manslaughter shewed no legal ground for the finding.—*Reg. v. The Clerk of Assize of the Oxford Circuit*, L.R. [1897] 1 Q.B. 370.

### Divorce:—

- (ii.) **P. D.**—*Maintenance and Allowance—Agreement set up in Bar—Matrimonial Causes Acts, 1857 (20 & 21 Vict., c. 85), s. 32; 1866 (29 & 30 Vict., c. 32), s. 1.*—A wife withdrew a petition for dissolution of marriage on an agreement by the husband to make her an annual allowance by way of permanent maintenance for herself and child, to be continued even if the marriage should be thereafter dissolved. On fresh grounds of offence, the wife subsequently obtained a divorce, and on petition for permanent maintenance and for maintenance and education of the child, the registrar held the agreement to be a bar. The Court reversed the decision, but gave the respondent leave to appeal on paying the petitioner's costs up to date, and giving security for her costs on the appeal.—*Bishop v. Bishop*, 76 L.T. 28.

### Easement:—

- (iii.) **C. D.**—*Grant of Right of Way to Lessee who acquires Fee.*—A right of way was granted to a tenant, from year to year, of the dominant tenement, who subsequently acquired the fee. *Held*, that having regard to the terms of the grant and the surrounding circumstances, the easement survived, and would pass to an assignee.—*Rymer v. Milroy*, L.R. [1897] 1 Ch. 528; 76 L.T. 115.

### Ecclesiastical Law:—

- (iv.) **Consistory Court of London.**—*Military Colours fixed to Walls of Chancel—Faculty—Member of Parliament and St. Margaret's, Westminster.*—Where a former rector and the churchwardens have without a faculty affixed military colours to the walls of the chancel of a church, the existing rector has no right without a faculty to remove them. In such a case of removal from St. Margaret's, Westminster, a Member of the House of Commons has a sufficient interest to institute a suit, and the Ordinary has jurisdiction to authorise by faculty the affixing of such colours to the chancel walls.—*Vincent and Tomlinson v. Eyton*, L.R. [1897] P. 1.
- (v.) **P. C.**—*Simony—False Declaration under Clerical Subscription Act, 1865—Clergy Discipline Act, 1892.*—Proceedings cannot be taken under the Act of 1892 against a clergyman charged with simony or with a false declaration under the Act of 1865. Decision of Court below (see Vol. 21, p. 76, ii.) reversed.—*A Beneficed Clerk v. Lee*, 75 L.T. 461.

- (i.) **Q. B. D.**—*Title to Pew in Church*.—In a claim of legal right to a pew as being by prescription annexed to a house, it was *held*, that the relining of the pew with baize, secured to the woodwork by nails, would not alone be a sufficient act of repair to establish the right, but the right could be established by evidence of exclusive possession, and that the woodwork of the pew was removed and appropriated by the claimant many years before.—*Stileman-Gibbard v. Wilkinson and Others*, 76 L.T. 90.

**Estoppel :—**

- (ii.) **Q. B. D.**—*Matter of Record—Rivers Pollution Prevention Act, 1876* (39 & 40 Vict., c. 75), s. 3, 20.—The defendants in an action in the county court had consented to an order declaring them to have committed an offence against the Rivers Pollution Prevention Act, and on being summoned for disobedience of the order, sought to shew that they were exempted by sect. 20 of the Act. *Held*, that the order of the Court was equivalent to a judgment, and that the defendants were estopped from disputing the commission of the offence.—*The Joint Committee of the River Ribble v. The Croston Urban District Council*, L.R. [1897] 1 Q.B. 251.

**Evidence :—**

- (iii.) **C. D.**—*Deed more than 30 years old—Executed by Attorney—Power not Produced—Presumption*.—Where no power of attorney is produced, or any evidence of its contents, in support of a deed more than 30 years old, which purports to be an appointment under a special power and to have been executed by an attorney, it was *held*, on the ground that there is no rule of law requiring the Court to presume that an attorney is duly authorised that the title of the appointees was not made out.—*In re Airey; Airey v. Stapleton*, L.R. [1897] 1 Ch. 167; 76 L.T. 151.

**Executor :—**

- (iv.) **C. D.**—*Misappropriation—Bankruptcy—Injunction*.—The Court has jurisdiction without appointing a receiver to restrain a person from acting as an executor.—*Bowen v. Phillips*, L.R. [1897] 1 Ch. 174; 75 L.T. 628.

**Fixtures :—**

- (v.) **C. A.**—*Engine under Hire and Purchase—Attached to Soil—Mortgagee in Possession—Rights of Vendor, of Hirer, and of Mortgagee*.—A mortgagee of land in fee, who enters upon the mortgaged premises, can take possession of an engine which is attached by bolts and screws to the soil, although the engine never was the property of the mortgagor, and whether it was fixed before or after the date of the mortgage. The vendor on the hire and purchase system of an engine so fixed can remove it, so long as the freehold of the land is in the purchaser of the engine, if instalments are in arrear, but he has no such right in law or equity against a purchaser of the land without notice of his claim. The vendor's remedy is then by action against his purchaser for the price of the engine, or for damages for its loss, or if the purchaser is bankrupt by proof against his estate. If a licence is given by a mortgagee to remove a fixture during the continuance of a term, entry by him determines the licence.—*Hobson v. Gorringe*, L.R. [1897] 1 Ch. 182; 75 L.T. 610.

**Factory and Workshop Acts :—**

- (vi.) **Q. B. D.**—*Dangerous Machinery—Shuttles—Factory and Workshop Acts, 1878* (41 & 42 Vict., c. 16), s. 5, sub-s. 3; 1891 (54 & 55 Vict., c. 75), s. 6, sub-s. 2.—Shuttles of looms in a cotton factory, if they are

likely to fly out of the shuttle race often enough to satisfy a reasonable interpretation of the word "dangerous," must be securely fenced.—*Hindle v. Birtwistle*, L.R. [1897] 1 Q.B. 192; 76 L.T. 159.

### Franchise:—

- (i.) **Q. B. D.**—*Borough Vote—Residents in Almshouses—Reform Act, 1832* (2 & 3 Will. IV., c. 45), s. 36.—An old endowment vested lands in the recipients, elected and removable by a town council of a charity for old, feeble and necessitous persons. The beneficiaries received a weekly allowance, were bound by rules, resided within precincts in rooms of which they were the legal owners, and had always voted at Parliamentary elections. *Held*, that as the legal interest in the land of the charity was vested in the recipients of the charity, they were not disqualified from voting under sect. 36 of the Reform Act.—*Coven and Another v. The Town Clerk of Kingston-upon-Hull*, L.R. [1897] 1 Q.B. 273; 75 L.T. 593.
- (ii.) **Q. B. D.**—*Voters—Objections—Lists Closed—Parliamentary and Municipal Registration Act, 1878* (41 & 42 Vict., c. 26), s. 28, sub-ss. 9, 10, 11.—Sect. 28 (9), (10) & (11) do not affect the practice, which is a reasonable and convenient one, of separating the defended from the undefended objections to names in municipal and parliamentary voters' lists, and of fixing days for applications to be heard. (*See also* Vol. 22, p. 12, viii.)—*Reg. v. Soren and Overend*, L.R. [1897] 1 Q.B. 188; 76 L.T. 161.

### Friendly Society:—

- (iii.) **C. A.**—*Expulsion of Member—Jurisdiction—Friendly Societies Acts, 1875* (38 & 39 Vict., c. 60), s. 22; 1895 (58 & 59 Vict., c. 26), s. 10.—A dispute as to the legality of the expulsion of a member of a friendly society is not one that must under the above sections of the Friendly Societies Acts be decided in the manner provided by the rules of the society.—*Palliser v. Dale*, L.R. [1897] 1 Q.B. 257; 76 L.T. 14.

### Gaming:—

- (iv.) **Q. B. D.**—*Payment of Bets in a Public House—Betting Act, 1853* (16 & 17 Vict., c. 119), ss. 1, 3.—Payment of bets is not "betting," and neither the bookmaker who pays at the bar of a public house bets made elsewhere, nor the licensee who permits the payment, can be convicted under sect. 3 of the Betting Act.—*Bradford Commissioner of Police v. Dawson and Parker*, L.R. [1897] 1 Q.B. 807; 76 L.T. 54.

### Hackney Carriage:—

- (v.) **Q. B. D.**—*Refusal to Drive into Railway Station—London Hackney Carriage Act, 1853*, s. 17, sub-s. 2.—The driver of a hackney carriage may be required to drive to any place within the limits of the Act to which he can lawfully obtain access. The interior of a railway station is a "place" within the meaning of sect. 17 of the Act.—*E. p. Kippins*, L.R. [1897] 1 Q.B. 1; 75 L.T. 421.

### Highway:—

- (vi.) **C. A.**—*Person by whose Order Extraordinary Traffic has been Conducted—Highways and Locomotive (Amendment) Act, 1878*, s. 23.—Decision of Court below (*see* Vol. 22, p. 44, v.) reversed; *dissentiente* Lopes, L.J.—*Lord Gerard v. The Kent County Council*, L.R. [1897] 1 Q.B. 351 76 L.T. 8.

### Husband and Wife:—

- (vii.) **P. D.**—*Desertion—Neglect to Provide—Cohabitation—Summary Jurisdiction (Married Woman) Act, 1895* (58 & 59 Vict., c. 39), s. 4.—Where a child was born of a marriage, though the husband and wife

had never lived together under the same roof, it was held, that the cohabitation was sufficient to give justices jurisdiction to make an order against the husband, who had refused to receive the wife into the house where he lodged.—*Bradshaw v. Bradshaw*, L.R. [1897] P. 24.

- (i.) **Q. B. D.**—*Separation under Summary Jurisdiction (Married Woman) Act, 1895, ss. 4 & 5*—*Summons dismissed—Action in County Court for Costs.*—A summons taken out by a married woman for separation on the ground of the husband's cruelty was dismissed, without order as to costs, and her solicitor brought an action in the County Court against the husband for the costs. Held, that neither the wife nor her solicitor could maintain such an action.—*Cale v. James*, L.R. [1897] 1 Q.B. 418; 76 L.T. 119.

### Innkeeper:—

- (ii.) **Q. B. D.**—*Liability to keep Guest.*—As the obligation of an innkeeper to receive a person as a guest only attaches where that person is a traveller, it was held, that no action would lie against the proprietor of an hotel for ejecting a guest who had remained for some months and refused to leave.—*Lamond v. Richard*, 75 L.T. 693.

### Insurance:—

- (iii.) **C. A.**—*Fire—Subrogation—Rights of Insurers.*—A lessee who was bound to repair had insured the premises, although the lessor had covenanted to do so. A fire occurred, and the lessee received £100 on his policy. He did not make good the damage, and at the termination of the lease, the lessor commenced an action for breach of covenant to repair, which the lessee compromised by paying £140, and undertaking not to sue on the lessor's covenant to insure. The lessor had also received £100 from the insurance company in which he had insured the premises. Held, that the plaintiff company who had paid the defendant lessee were entitled to his rights under the lease, and could recover from him the £100 which he had given up.—*West of England Fire Insurance Company v. Isaacs*, L.R. [1897] 1 Q.B. 226; 75 L.T. 564.
- (iv.) **C. A.**—*Claim under Policy Executed but Retained—Recital of Payment of Premium—Non-payment—Waiver.*—A policy of insurance against burglary, which recited that a premium had been paid covering loss from 14th December was executed on 27th December, but retained by the insurers until the premium should be paid. On the 27th December a loss of goods insured took place. Held, that by the recital a condition for prepayment of premium was waived, and that the policy was a completed contract, under which the defendants were liable.—*Roberts v. Security Co., Limited*, L.R. [1897] 1 Q.B. 111; 75 L.T. 531.

### Joint Tenancy:—

- (v.) **C. D.**—*Severance by Marriage.*—A joint tenancy in freeholds or leaseholds is not severed by the marriage of a female joint tenant, nor by the granting (in 1867) of a lease, or a sub-demise by her husband, and the other joint tenant where the rent was reserved to them jointly.—*Palmer v. Rich*, L.R. [1897] 1 Ch. 134; 75 L.T. 484.

### Justices:—

- (vi.) **Q. B. D.**—*First Offence—Summary Jurisdiction Act, 1879 (42 & 43 Vict., c. 49), ss. 4 & 51—Cotton Cloth Factories Act, 1889 (52 & 53 Vict., c. 62), s. 18.*—Notwithstanding sects. 4 and 51 of the Summary Jurisdiction Act, justices have no jurisdiction in the case of a first

offence under the Cotton Cloth Factories Act to reduce the fine fixed by sect. 13 of this Act.—*Osborn v. Wood Brothers*, L.R. [1897] 1 Q.B. 197 ; 76 L.T. 60.

- (i.) **Q. B. D.**—*Sunday Observance Act, 1676* (29 Car. 2, c. 7), s. 1—*Sunday Observance Preservation Act, 1871* (34 & 35 Vict., c. 87), s. 1.—Where a chief constable gave a verbal consent to an information being laid against a person under the above Acts, and only after the summons was issued gave his consent in writing, it was held that a conviction was bad.—*Thorpe v. Priestnall*, L.R. [1897] 1 Q.B. 159.
- (ii.) **C. A.**—Decision of Court below (see Vol. 22, p. 45, v.) affirmed.—*Jones v. German*, 76 L.T. 136.

### Landlord and Tenant :—

- (iii.) **Q. B. D.**—*Covenant by Tenant to Pay Duties, &c.*—*New Drains—Public Health (London) Act, 1891* (54 & 55 Vict., c. 76), ss. 4, 121.—Where a tenant covenanted to pay all duties and impositions, parliamentary, parochial, or otherwise, in respect of demised premises, it was held that the landlord could recover from him the amount expended on repairs to drains on the premises in compliance with a notice from the County Council under the Public Health Act.—*Brett v. Rogers*, L.R. [1897] 1 Q.B. 525 ; 76 L.T. 26.
- (iv.) **C. D.**—*Notice of Breach of Covenant—Conveyancing Act, 1881* (44 & 45 Vict., c. 41), s. 14.—A notice served by a lessor that the lessee had broken covenants to repair six houses and requiring him to repair and pay compensation was held to be insufficient to satisfy sect. 14, subsect. 1 of the Conveyancing Act, 1881, as the notice ought to inform the tenant of the particular things of which the landlord complains.—*Fletcher v. Nokes*, L.R. [1897] 1 Ch. 271 ; 76 L.T. 107.

### Lease :—

- (v.) **H. L.**—*Pond with Stream Leading Thereto.*—Two ponds “together with the right to the water in the said ponds and in the streams leading thereto” were included in a demise. Held (the Lord Chancellor dissenting) not to include a spring which percolated the ground in no defined channel.—*McNab v. Robertson and Others*, L.R. [1897] A.C. 129 ; 75 L.T. 666.

### Legal Tender :—

- (vi.) **C. D.**—*Tender of Cheque to Solicitor.*—The tender of a cheque to the solicitor of a mortgagee in payment of charges is not a good tender unless the solicitor has authority from his client to accept a cheque in payment.—*Blumberg v. The Life Interests and Reversionary Securities Corporation, Limited*, L.R. [1897] 1 Ch. 171 ; 75 L.T. 627.

### Libel :—

- (vii.) **H. L.**—*Excess of Privilege—Malice.*—Decision of Court of Appeal (see Vol. 20, p. 108, i.) affirmed.—*Neville v. Fine Arts and General Publishing Co.*, L.R. [1897] A.C. 68 ; 75 L.T. 606.

### Licensing :—

- (viii.) **Q. B. D.**—*Soldiers and Sailors—Claim to Sell Liquors without Licence.*—56 Geo. III., c. 67, provides that certain soldiers and others or their wives and children may set up trades without molestation, any statute, &c., to the contrary notwithstanding. Held, that this does not exempt such persons from the general provisions of the licensing and other Acts, but merely from restrictions imposed by charters or local customs.—*Killin v. Swatton*, 76 L.T. 55.

- (i.) **Q. B. D.**—*Bona-fide Traveller—Sale of Intoxicating Liquor for Consumption off Premises—Licensing Act, 1874 (37 & 38 Vict., c. 49), s. 10.*—A licensed person is not authorised, under sect. 10, to sell during the time his premises are required to be closed, intoxicating liquors for consumption off the premises.—*Mountfield v. Ward*, L.R. [1897] 1 Q.B. 326.

**Local Government:—**

- (ii.) **Q. B. D.**—*Bye-law of County Council—Use of Obscene Language in House near Street—Annoyance—Local Government Act, 1888 (51 & 52 Vict., c. 41), s. 16—Municipal Corporations Act, 1882 (45 & 46 Vict., c. 50), s. 23.*—A bye-law made by a county council, under sect. 16 of the Local Government Act, 1888, prohibiting under penalty any person from using obscene language in any place near a street to the annoyance of anyone in such street, was held to be good. Held also that a man who had used obscene language in a room, the door of which opened into a public street, to the annoyance of persons in the street, ought to have been convicted under the bye-law.—*Mantle v. Jordan*, L.R. [1897] 1 Q.B. 248; 75 L.T. 552.
- (iii.) **C. D.**—*Removal of Obstruction from Highway—Personal Influence Alleged in Pleadings—Irrelevancy—Local Government Act, 1894 (56 and 57 Vict., c. 73), ss. 26, 46.*—A statement of claim in an action against a local board to restrain the removal of posts which protected a foot-path from vehicular traffic, alleged that a member of the board had used his influence for private interests. Held, that a local board acting under sect. 26, sub-sect. 6, of the Local Government Act is in the position of a private individual protecting his own property, and that as the real issue was whether the posts were an obstruction to the public right of way, the allegations ought to be struck out.—*Murray v. Epsom Local Board*, L.R. [1897] 1 Ch. 35; 75 L.T. 579.
- (iv.) **C. A.**—*Drainage—Statutory Duty—Non-feasance—Remedy—Public Health Act, 1875 (38 & 39 Vict., c. 55), ss. 15 & 299.*—When an Act of Parliament creates a duty, and gives a special remedy in case of non-feasance of that duty, no action will lie at the suit of an individual. Therefore, though sect. 15 of the Public Health Act, 1875, requires a local authority to cause necessary sewers to be made in its district, an action for non-feasance will not lie against the authority where damage has been caused by overflow of an insufficient sewer. The only remedy of a person injured by the overflow is by complaint, under sect. 299, to the Local Government Board.—*Robinson v. The Mayor of Workington*, 75 L.T. 674.
- (v.) **C. D.**—*Local Act—Agreement of Commissioners with Defendant—Transfer to Corporation of Powers of Commissioners—Claim for Paving—Memorial to Secretary of State—West Hartlepool Extension and Improvement Act, 1870.*—The defendant, by agreement with a local authority, gave space for a road along a frontage. He was subsequently required by an order of the corporation, who succeeded the local authority, to drain and pave the road, and, on default, the work was done by the corporation, who took out a summons to have the expenditure declared a charge on his property. Held, that the corporation had, under its local Act, power to make the order, and that entry under the order was not trespass; that the corporation were not compelled to go to arbitration, and therefore were entitled to sue (following *Mayor of Folkestone v. Brooks*, 69 L.T. 403 [1893] 3 Ch. 22); that the agreement was not a defence to the action, but that having regard to sect. 349 of the local Act, a memorial could be presented to the Secretary of State for relief (following *Walthamstow Local Board v. Staines*, 65 L.T. 430).—*The Mayor of West Hartlepool v. Robinson*, 75 L.T. 677.



**Lunatic:—**

- (i.) **C. D.**—*Pauper Lunatic—Guardians—Authority to Deal with Lunatic's Property—Lunacy Act, 1891, s. 299.*—A receiver of a lunatic's estate who had been appointed with directions to pay the costs of guardians incurred while the lunatic was an inmate of the county asylum, brought an action for an injunction to restrain the guardians from enforcing an order which they had previously obtained from a magistrate, under sect. 299 of the Lunacy Act, to seize a sum of money belonging to the lunatic in the hands of a trustee. *Held*, that the injunction must be granted as the section did not make the guardians the authority for dealing with the property of a pauper lunatic.—*Winkle v. Bailey*, L.R. [1897] 1 Ch. 123; 75 L.T. 577.

**Mandamus:—**

- (ii.) **Q. B. D.**—*Alternative Remedy—Endowed Schools Act, 1869 (32 and 33 Vict., c. 56).*—A scheme for the management of Christ's Hospital provides that any question as to validity of proceedings "shall be determined conclusively by the Charity Commissioners." On an application to the Court for a mandamus to compel the Commissioners to decide whether a lady could be appointed an almoner. *Held*, that a mandamus ought not to issue, as there was an effectual remedy either under the Charitable Trusts Act, 1853, s. 28, or by action against the governors, and (by Wright, J.) that the question was not one affecting the validity of proceedings.—*R. v. Charity Commissioners of England and Wales*, L.R. [1897] 1 Q.B. 407.

**Master and Servant:—**

- (iii.) **Q. B. D.**—*Injury to Workman—Employers Liability Act, 1880 (43 & 44 Vict., c. 42), s. 1, sub-s. 1.*—Where a guard, put to protect persons from injury by a saw in a factory, was occasionally removed for convenience, and on its absence one of the workmen was injured, it was *held*, that the absence constituted a defect in the machinery within sect. 1, sub-s. 1, of the Employers Liability Act.—*Tate v. Latham*, L.R. [1897] 1 Q.B. 502; 75 L.T. 694.
- (iv.) **C. A.**—*Driver of Cart—Transgressing Orders—Damage.*—The driver of a tradesman's cart on its rounds was forbidden by his master to leave the vehicle, and a boy who accompanied him was forbidden to drive. The driver quitted the cart, and the boy drove, causing damage to another vehicle. *Held*, that the negligence of the driver in the course of his employment caused the damage, and that the master was liable.—*Engelhardt v. Farrant & Co. and Lipton*, L.R. [1897] 1 Q.B. 240; 75 L.T. 617.

**Mayor's Court:—**

- (v.) **C. A.**—*Jurisdiction—Prohibition.*—The plaintiff preferred a bill of complaint on the Equity side of the Lord Mayor's Court, for specific performance (or in the alternative damages) of a contract for a transfer of shares in a company registered in Scotland. *Held*, that as the action was not for damages for breach of contract, it was not within sect. 12 of 20 & 21 Vict., c. 157, and as the whole of the cause of action did not arise within the jurisdiction, a writ of prohibition should be granted.—*Bowler v. The Barberton Syndicate, Limited*, L.R. [1897] 1 Q.B. 164; 75 L.T. 620.

**Merchant Shipping:—**

- (vi.) **Q. B. D.**—*Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60), ss. 320, 341, 342.*—An agreement for a sum of money to place a person as a farm servant in Canada and to procure him a passage to Quebec was

held not to be a sale or letting of a passage within sect. 341, or to bring the contractor within sect. 342 as a passage broker; and the money received was held not to be for a passage in a ship within sect. 320.—*Morris v. Howden*, L.R. [1897] 1 Q.B. 378; 76 L.T. 156.

### Metropolis :—

- (i) **Q. B. D.**—*Public Health—Order of Sanitary Authority—Jurisdiction of Magistrate—Public Health (London) Act, 1891 (54 & 55 Vict., c. 76), s. 37.*—The only appeal from an order of a sanitary authority acting under sect. 37 of the Public Health Act, 1891, for the supply of further water closet accommodation to a house, is to the county council, and a magistrate at the hearing of a summons for non-compliance with the order, has no jurisdiction to enquire into the need for the accommodation ordered.—*Vestry of St. John's, Hackney v. Hatton*, L.R. [1897] 1 Q.B. 210; 75 L.T. 686.
- (ii) **Q. B. D.**—*Building Notice—Erection of Seating—London Building Act, 1894 (57 & 58 Vict., c. 213), s. 145.*—Blocks of seating capable of being fitted temporarily to parts of the inside of a building were kept and used as occasion required by the Agricultural Hall Company. Held, that the seating was not a "structure or work," and its replacement was not the beginning of such a structure or work within the meaning of sect. 145 of the Act.—*Venner v. McDonnell*, L.R. [1897] 1 Q.B. 421; 76 L.T. 152.
- (iii) **Q. B. D.**—*Public Health (London) Act, 1891, s. 19, sub-s. 4—Bye-Laws.*—A local authority with statutory powers to make bye-laws for "regulating the conduct of the business" of a "slaughterer of cattle," made a bye-law providing that "An occupier of a slaughterhouse shall not slaughter, or permit to be slaughtered, any animal . . . in any part of the premises except the slaughterhouse, and "shall not slaughter, or permit to be slaughtered, any animal within public view, or within the view of any other animal." Held, that such bye-law was valid, and rendered a master liable for acts of his servants.—*Collman v. Mills*, L.R. [1897] 1 Q.B. 396; 75 L.T. 590.
- (iv) **C. D.**—*Party Structure—Notice by Adjoining Owner—London Building Act, 1894, s. 5, sub-s. 29; s. 90.*—Where the plaintiff was in possession of land under an agreement that when he had erected buildings of a certain value he should be granted a lease, it was held that notice must be served upon him, under sect. 90 of the London Building Act, 1894, by an adjoining owner who desired to erect a party structure.—*Iest v. Tharp*, L.R. [1897] 1 Ch. 260; 76 L.T. 45.
- (v) **Q. B. D.**—*County Council—Dangerous Structures—Delegation of Duties.*—The London County Council can delegate to their architect the duties imposed upon them by the London Building Act, 1894 (Part IX.), as to dangerous structures.—*London County Council v. Hobbs*, 75 L.T. 686.
- (vi) **Q. B. D.**—*Street Musician—Order to Depart—27 & 28 Vict., c. 55.*—A householder ordering from the neighbourhood of his house a street musician, under sect. 1 of 27 & 28 Vict., c. 55, must state to him the reason for the order.—*Shields v. Howard*, L.R. [1897] 1 Q.B. 84.

### Mortgage :—

- (vii) **C. A.**—*Sale—Surplus Proceeds in Hands of First Mortgage—Interest.*—Where a first mortgagee retains on realisation more money than sufficient to satisfy his claim, he will, generally, be ordered to pay interest on the surplus to the second mortgagee. A second mortgagee was not deprived of this interest, though he had abstained for four years from enforcing his claim to the surplus money retained by the first mortgagee.—*Eley v. Read*, 76 L.T. 39.

- (i.) **C. D.**—*Contract for Sale of Lease, Goodwill and Furniture—Unpaid Purchase-Money—Assignment and Mortgage not Executed—Receiver.*—A contract was entered into for the sale of the lease, goodwill and furniture of a private hotel, and a draft assignment of the lease and a mortgage to secure unpaid purchase-money were prepared, but not executed. *Held*, on motion in an action for specific performance, that a receiver and manager might be appointed to take possession of the premises with authority to carry on the business, but not to include any chattels other than those which would pass on an assignment of the lease.—*Poole v. Downes*, 76 L.T. 110.

### Nuisance :—

- (ii.) **C. D.**—*Vacant Land—Injunction—Public Health (London) Act, 1891, ss. 13, 35.*—Both at common law and under the Public Health Act, local authorities in London have a right of action for an injunction to restrain a nuisance on vacant private land, but the Court may be unwilling to grant an injunction where the authorities have also special powers to abate the nuisance themselves.—*Attorney-General v. Tod-Heatley and Brownrigg*, 75 L.T. 452.
- (iii.) **H. L.**—*Tramway—Obstruction of Street.*—A tramway company in Scotland, with statutory powers of running, were held liable to an interdict to restrain them from so removing snow from their lines as to be a nuisance to the public, and were not excused on the ground that if the road authorities had not delayed to clear the streets through which the line ran, the nuisance would not have arisen.—*Ogston v. Aberdeen District Tramways Co.*, L.R. [1897] A.C. 111 ; 75 L.T. 633.
- (iv.) **C. A.**—*Dangerous Condition of Premises—Injury—Liability of Landlord.*—In the absence of a contract to repair, a landlord is not liable to a tenant's customers or guests for injuries caused by the dangerous condition of premises which he has let ; but if the condition of the premises is the cause of a public nuisance or of injury to adjoining premises, the landlord may be liable.—*Lane v. Cox*, 76 L.T. 135.

### Partnership :—

- (v.) **C. A.**—*Articles—Brewery—Death of one Partner—Purchase by Survivor—Goodwill—Tied Houses.*—Decision of Court below (see Vol. 22, p. 20, ii.) affirmed.—*Page v. Ratcliffe*, 76 L.T. 63.

### Patent :—

- (vi.) **C. D.**—*Licence—Option to Purchase—Royalty when Option Exercised—Advertisement of Licensee Threatening Infringers—Defensive Statements Injuring Plaintiff.*—An agreement, giving a licensee of a patent the option of purchase up to a given date, subject to payment of a royalty if the option was not exercised, was *held* to free the licensee on purchase from royalty on the patent goods made by him between the dates of the licence and the exercise. An exclusive licensee with such an option has a sufficient interest in the patent to rebut a presumption of want of good faith in issuing advertisements threatening proceedings against infringers, though he may not be entitled to recover damages, and he can claim the protection of sect. 32 of the Patents, &c., Act, 1883. A plaintiff must prove express malice to entitle him to an injunction to restrain a person from making statements in defence of his own property, which are true in substance and in fact, though they be made for the purpose of injuring the plaintiff or his trade.—*The Incandescent Gas Light Co. v. The New Incandescent (Sunlight Patent) Gas Lighting Co., Limited*, 76 L.T. 47.

- (i.) **P. C.**—*Patent—Assignee—Prolongation—Patents, &c., Act, 1883.*—An assignee of a patent, which he has bought as a commercial venture, has no claim to prolongation, because the patent has been unremunerative to him.—*In re Hopkinson's Patent*, 75 L.T. 462.
- (ii.) **C. D.**—*Variation between Specifications—Rights of Patentee.*—A provisional specification need not give more than a rough description of the invention, and need not describe details of its advantages or of the manner in which it is to be carried out. Where the invention consists of several parts, every part need not fulfil all the objects claimed, and advantages not expressly mentioned may apply to some of the parts. In the complete specification, the inventor may refer to the manner in which the invention can be applied to discoveries made by other persons since the date of the provisional specification. A patentee is entitled to the benefit of his invention if it is applied by other inventors to purposes not contemplated by him.—*Pneumatic Tyre Co. v. East London Rubber Co.*, 75 L.T. 488.
- (iii.) **C. A.**—*English Patent—Infringement—Goods made abroad and sent through Local Agent to English Customer—Injunction.*—Where goods infringing an English patent were made abroad, and handed by the manufacturers to a forwarding agent at the place of manufacture who sent them by post to a customer in England, and received payment through the post, the Court in an action by the owner of the English patent, granted an injunction restraining the foreign manufacturers or their agents from importing or bringing into or delivering in England, goods infringing the patent, or from selling or supplying, or assisting or taking any part in such importation or delivery.—*Badische Anilin und Soda Fabrik v. Johnson & Co. and the Basle Chemical Works, Bindschedler*, 76 L.T. 21.

#### Poor Law:—

- (iv.) **C. D. & C. A.**—*Loans to Guardians—Repayment before fixed Date—Poor Law Loans Act, 1871 (34 Vict., c. 11), s. 2.*—Guardians of a poor law union had borrowed sums of money before the date of the Poor Law Loan Act, repayable in periods not exceeding thirty years by annual instalments which included interest as well as principal. The instrument securing the loan contained a stipulation that with the consent of the lenders the whole sum might be repaid before the stipulated period. The Poor Law Loan Act enables guardians to pay off loans before the stipulated period on obtaining an order from the Local Government Board, but the Act has a proviso that loans outstanding at the date of the passing of the Act should not be paid off without the consent of the lender. *Held (dissentiente, Smith, L.J.)*, reversing the decision of the Court below, that the Guardians could not even with the sanction of the Local Government Board redeem the loan prior to the stipulated date without the consent of the lender.—*The Guardians of the Poor of the West Derby Union v. The Metropolitan Life Assurance Society*, L.R. [1897] 1 Ch. 335; 75 L.T. 412 and 76 L.T. 73.
- (v.) **C. A.**—*Guardians—Judgment for Costs in Supreme Court—Date from which time runs—Poor Law (Payment of Debts) Act, 1859, s. 1.*—Costs of an appeal which guardians are ordered to pay are not a "debt" within sect. 1 of the Poor Law Act, 1859, till after taxation, and the time for payment runs from the date of allocatur.—*Manchester, Sheffield, and Lincolnshire Railway v. Guardians of Poor of Doncaster Union*, L.R. [1897] 1 Q.B. 117; 75 L.T. 472.
- (vi.) **Q. B. D.**—*Settlement by Residence—Absence in a Hospital—9 & 10 Vict., c. 66, s. 1—Divided Parishes Act, 1876 (39 & 40 Vict., c. 61), s. 34.*—Where a man had resided in one parish from July, 1892, to April,

1896, but during the months of May, June, and July, 1895, had been a patient in a hospital outside the parish, it was held that he had not acquired a status of irremovability in the parish of residence within the terms of the Divided Parishes Act, 1876.—*St. Olave's Union v. Canterbury Union*, L.R. [1897] 1 Q.B. 438; 76 L.T. 88.

### Poor Rate:—

- (i.) **Q. B. D.**—*Lighthouse—Dues*.—Dues received on account of a lighthouse do not come under consideration in assessing its rateable value.—*Commissioners of Port of Lancaster v. Overseers of Poor of Barrow-in-Furness*, L.R. [1897] 1 Q.B. 166.

### Practice:—

- (ii.) **C. D.**—*Solicitor—Costs—Administration Action—Person Liable—Solicitors Remuneration Act, 1881—General Order, s. 7*.—Solicitors to a testator, who were also solicitors to his executor, delivered a bill of costs to the person having the conduct of an action for the administration of the deceased's estate. The taxing-master's certificate was not made out for some time, and the solicitors claimed interest. Held, that the person liable under sect. 7 of the General Order was not the person having the conduct of the action, but the executor; and no demand having been made upon him, the solicitors were not entitled to interest.—*In re McMardo; Penfield v. McMardo*, L.R. [1897] 1 Ch. 119; 75 L.T. 576.
- (iii.) **P. D.**—*Collision—Writ against Foreign Corporation—Service on Agents' Manager—O. ix., r. 8*.—Where a foreign corporation paid a commission and annual allowance to an agent who rented offices in London, the service of a writ upon the agent's manager was held not to be service upon the corporation within the meaning of O. ix., r. 8.—*The Princesses Clementine*, L.R. [1897] P. 18; 75 L.T. 695.
- (iv.) **C. D.**—*Service Out of Jurisdiction—Power of County Court and of High Court—O. xi., r. 2*.—A county court action had been transferred to the High Court on the ground that the value of the estate concerned exceeded the county court limit. Service on the defendant, resident in Scotland, had been directed under O. li., r. 23, of the C.C. rules; and the defendant had answered interrogatories before the transfer. Held, that under the rule in question service out of the jurisdiction could in the circumstances of the present case be ordered by a county court; though under like circumstances these would be under the Supreme Court rules, O. xi., r. 2, a restriction on the High Court to "have regard to the comparative cost and convenience of proceedings in England" when there was a concurrent remedy in Scotland. And that as it would be unfair for a plaintiff to obtain an advantage by bringing an action in a wrong Court, the defendant should have an opportunity, there having been no waiver, to give evidence that the High Court has no jurisdiction without considering the question of cost and convenience.—*Wood v. Middleton*, L.R. [1897] 1 Ch. 151; 75 L.T. 480.
- (v.) **C. A.**—*Judgment under O. xiv.—Appeal from Chambers is to Court of Appeal*.—An appeal against an order of a judge in chambers giving leave to extend final judgment under O. xiv., r. 1, must be brought in the Court of Appeal, as it is a "matter of practice and procedure" within sect. 1, sub-sect. 4, of the Judicature Act, 1894.—*Cannon Brewery Co. v. Gilbey*, 75 L.T. 407. .
- (vi.) **C. A.**—*O. xiv., r. 2—Summons for Judgment—Dismissal on Technical Objection—Second Summons—Res Judicata*.—Unconditional leave to defend was given on a summons under O. xiv. in consequence of a

technical omission in the writ. The writ was amended and a fresh summons taken out, when the leave to defend was made conditional on payment into Court of the sum claimed. *Held*, on appeal, that the Court had power to adjudicate upon the second summons.—*Dombey and Son, Limited (in liquidation) v. Playfair Bros. and Others*; L.R. [1897] 1 Q.B. 368; 75 L.T. 676.

- (i.) **C. A.**—*Suing in formâ pauperis*—*Affidavit*—*Case and Opinion Exhibits*—*Right to Inspect*—O. xvi., rr. 23 & 24.—A defendant is not entitled to inspect the case and opinion of counsel which are made exhibits to the affidavit of an applicant for leave to sue in *formâ pauperis*.—*Hoane v. The British Steamship Co., Limited*, L.R. [1897] 1 Q.B. 185; 75 L.T. 542.
- (ii.) **C. D.**—*Third Party Procedure*—O. xvi., r. 48.—On the ground that a banking account into which trust funds had been paid was the partnership account of a firm of solicitors of which a deceased trustee had been a member, the defendant a co-trustee of the deceased, obtained leave, in an action for alleged breach of trust, to serve a third party notice on the surviving members of the firm. *Held*, that as the claim of the defendant was not for indemnity, for, whether the action against him succeeded or failed, he could if the firm was liable pursue his remedy against the surviving partners, the third party notice must be discharged.—*Wynne v. Tempest*, L.R. [1897] 1 Ch. 110; 75 L.T. 624.
- (iii.) **H. L.**—*Statute of Frauds—Pleading*—O. xix., rr. 4, 15, 20.—The respondents were printers of a newspaper, and the appellant was the publisher and also the managing director of a company who were the proprietors of the paper. An action in which the respondents were plaintiffs, was brought on a guarantee signed by the defendant, the present appellant which ran, "If you will bring out the present number, I will repeat my guarantee to see you paid in full," and the question arose whether the document guaranteed payment for a single number, or for the amount due for printing this and other numbers. At the trial the plaintiff gave evidence, that the document was in substitution of a parol guarantee, previously given for the whole debt, and the defendants not having pleaded the Statute of Frauds (which would have been irrelevant to the Statement of Claim), were held not entitled to rely on the statute. *Held*, reversing the decision of the Court below (*see* Vol. 22, p. 22, iv.) that if the evidence was admissible, the defendant was not debarred from relying on the statute by the fact that he had not pleaded it.—*Brunning v. Odhams Brothers, Limited*, 75 L.T. 602.
- (iv.) **C. A.**—*Payment into Court before Defence—Defence denying Liability*—O. xxii., rr. 1, 4, 6, 7.—A defendant paid a sum into Court and served notice that it was sufficient to satisfy the plaintiff's claim. A month afterwards the defendant delivered a defence denying liability, and the plaintiff joined issue. *Held*, that the defence and the joinder of issue should be struck out, and that the only question for the Court was damages.—*Dumbleton v. Williams, Torrey, and Field, Limited*, 76 L.T. 81.
- (v.) **C. D.**—*Plaintiff Improperly Joined—Action Discontinued—Jurisdiction—Old Practice*—O. xxvi., r. 1.—Solicitors of a company joined, without authority, the company with themselves as co-plaintiffs in an action and costs were incurred. On a notice of motion by the company to strike out its name, the solicitors gave notice to discontinue the action, and took the objection that as the action was gone, the Court had no jurisdiction. *Held*, that there being no rule on the point, the old practice in Chancery prevailed, and that the Court had jurisdiction to deal with the motion.—*Gold Reefs of Western Australia v. Dawson*, L.R. [1897] 1 Ch. 115; 75 L.T. 575.

- (i.) **P. D.**—*Probate Suit—Judgment in absence of Plaintiff—Leave to Restore Cause*—O. xxxvi., r. 33.—Where judgment had been given in a probate suit at the hearing of which the plaintiff was by mistake not represented, leave was given to restore the cause, on the plaintiff paying, by a fixed day, the defendant's costs, as between solicitor and client.—*Cudworth v. Hayward*, 75 L.T. 456.
- (ii.) **C. D.**—*Evidence—Statements in Affidavit—Order to Examine Author*—O. xxxvii., r. 5.—Leave was given for the examination before an examiner, of a person alleged to have made to a deponent, statements set out in an affidavit filed on behalf of plaintiffs on a motion, the deposition to be taken in evidence as if it were an affidavit.—*The Turner Pneumatic Tyre Co., Limited v. The Dunlop Pneumatic Tyre Co., Limited*, 75 L.T. 651.
- (iii.) **C. A.**—*Consolidation of Actions*—O. xlix., r. 8.—At the instance of a plaintiff as well as at that of a defendant causes or matters pending in the same Division, may under the Order be consolidated by direction of the Court, or a Judge.—*Martin v. Martin and Co.*, L.R. [1897] 1 Q.B. 429; 76 L.T. 44.
- (iv.) **C. D.**—*Costs—Administration Action—Severance of Defence of Trustees—Judicature Act, 1873 (36 & 37 Vict., c. 66), s. 49—O. lv., r. 1.*—On an appeal against an order excluding an executor and trustee, who had severed the defence in an administration action from participation in one set of costs allowed, the Order was varied to the effect that the allowed costs should be apportioned by the taxing-master, but so only as to give costs to the excluded executor for work actually done by him.—*In re Isaac; Cronbach v. Isaac*, L.R. [1897] 1 Ch. 251; 75 L.T. 638.
- (v.) **C. D.**—*Mortgage—Foreclosure—Form of Judgment.*—In taking account in a foreclosure action where a receiver of rents and profits has been appointed, the mortgagee ought to be charged with any sum paid into Court by the receiver, with any sum in the receiver's hands at the date of the certificate and with such sum as the mortgagee shall submit to be charged with, in respect of rents and profits to come into the receiver's hands prior to the order for foreclosure absolute. Form in Seton's Judgments, 5th Edition, Vol. 3, p. 2142 (*Addenda*) varied.—*Simmons v. Blandy*, L.R. [1897] 1 Ch. 19; 75 L.T. 646.
- (vi.) **C. D.**—*Ancient Lights—Separate Actions by Husband and Wife Owners of Adjoining Houses*—O. xvi., r. 1—O. xviii.—A husband and a wife, each of whom owned a house, brought separate actions against the same defendant for threatened interference with ancient lights. *Held*, that if it should be found that the wife was not entitled to her separate use, the taxing-master should disallow extra costs occasioned by bringing more than one action.—*Heimbs v. Newcastle Co-operative Society*, 76 L.T. 109.
- (vii.) **C. D.**—*Infant made Plaintiff without Authority—Costs—Liability of Plaintiff's Solicitors.*—An infant had been without authority joined as a plaintiff by solicitors who were unaware of his incapacity. *Held*, that the solicitors must pay the costs of the defendant, caused by the infant being made a plaintiff, and must also pay the costs of the application by summons taken out by the defendant. *Fricker v. Van Gratten* (see Vol. 22, p. 50, iii.) followed.—*Geiliger v. Gibbs*, L.R. [1897] 1 Ch. 479; 76 L.T. 111.
- (viii.) **P. D.**—*Divorce Suit—Sufficient Notice of Setting Down for Trial—Divorce Court Rules 44, 47.*—A letter from the petitioner's solicitor to the respondent's solicitor, stating that he had set the cause down for

trial, was *held* to be a sufficient notice; but as a decree had been made in the absence of the respondent owing to his solicitor relying on a more formal notice, a new trial was ordered on the respondent's solicitor undertaking personally to pay the costs thrown away.—*Fluister v. Fluister and Hutton*, L.R. [1897] P. 22.

### Principal and Agent:—

- (i.) **Q. B.**—*Contract by Public Servant of Crown—Liability of Agent.*—A public servant acting for the Crown is not liable for breach of implied warranty of authority to enter into a contract. *Collen v. Brown* (8 E. and B. 647) considered.—*Dunn v. Macdonald*, L.R. [1897] 1 Q.B. 401.

### Public Health:—

- (ii.) **C. D.**—*National School—Street—Charge on School—Enforcement by Sale or Mortgage—School Sites Act, 1841 (4 and 5 Vict., c. 38), ss. 6, 7 and 15—Public Health Act, 1875 (38 & 39 Vict., c. 55), s. 257.*—Where the expenses of paving a street on which a national school abutted had been declared to be a charge on the school, it was *held*, that the sum required could be raised by sale or mortgage of the premises, though the site was originally conveyed to trustees for “no other purpose whatever” than a school.—*Hornsey District Council v. Smith*, 75 L.T. 684.
- (iii.) **Q. B.**—*Liquids from Factory—Drains—Duty of Local Authority—Mandamus—Public Health Act, 1875, ss. 15, 21, 299—Rivers Pollution Prevention Act, 1876 (39 & 40 Vict., c. 75), ss. 7, 10.*—On the ground that no sufficient remedy was afforded by sect. 299 of the Public Health Act, 1875, a mandamus was granted to compel a local authority under sects. 15 and 21, to provide sewers to carry off liquids from a factory in the district. But a mandamus to compel the authority to give facilities, under sect. 7 of the Rivers Pollution Prevention Act, 1876, for carrying off the liquids by existing sewers was refused, on the ground that a sufficient remedy was provided in this case by sect. 10. (See also Vol. 22, p. 21, i.)—*Peebles and Others v. Oswaldtwistle Urban District County Council*, L.R. [1897] 1 Q.B. 384; 75 L.T. 689.
- (iv.) **Q. B. D.**—*“Cowkeeper”—Dairyman—Public Health (London) Act, 1891 (54 & 55 Vict., c. 76), ss. 20, 141.*—A person who keeps cows for the purpose of fattening calves and does not sell milk is not a dairyman within sect. 20, nor a cowkeeper within sect. 41 of the Public Health Act, and therefore does not require a licence from the London County Council.—*Umfreville v. The London County Council*, 75 L.T. 550.

### Railway:—

- (v.) **C. A.**—*Fences—Accommodation Works—Liability of Company—Limit of Time—Railway Clauses Act, 1845 (8 & 9 Vict., c. 20), ss. 68 & 73.*—Decision of Court below (see Vol. 22, p. 51, i.) affirmed.—*Dixon v. Great Western Railway*, L.R. [1897] 1 Q.B. 300; 75 L.T. 539.
- (vi.) **C. D.**—*Railway Companies Act, 1867, s. 4—Rights of Judgment Creditor of Railway.*—Where a railway company had made default on an obligation imposed by statute to repay to another railway company certain expenditure on a joint station, it was *held* that execution would not issue on a judgment against the defaulting company as the obligation was not a “contract” within the terms of sect. 4 of the Railway Companies Act, 1867.—*In re Manchester and Milford Railway*, L.R. [1897] 1 Ch. 276; 75 L.T. 416.



- (i.) **C. A.**—*Through Booking—Railway and Canal Traffic Act, 1854, s. 2*—Through booking over a route formed of more than one line of railway cannot be claimed of the railway commissioners as a matter of right under sect. 2 of the Railway and Canal Traffic Act, 1854. The granting of an application for such a facility depends upon a consideration of the provisions of sect. 25 of the Act of 1898 as to through rates.—*Didcot, Newbury, and Southampton Railway v. The London and South Western Railway and The Great Western Railway*, L.R. [1897] 1 Q.B. 33; 75 L.T. 401.

### Rating:—

- (ii.) **C. A.**—*Poor Rate—Joint Occupation for Crown Purposes and for Local Purposes—Rateability.*—Decision of Queen's Bench Division (see Vol. 22, p. 25, vi.) affirmed.—*County Council of Middlesex v. Assessment Committee of St. George's Union*, L.R. [1897] 1 Q.B. 64; 75 L.T. 464.
- (iii.) **Q. B. D.**—*Distress Warrant—Poor Rate—Justices—Jurisdiction to Inquire into Beneficial Occupation.*—Justices have jurisdiction to enquire whether a person against whom a distress warrant for recovery of the amount of a poor rate is applied for is really the person in occupation of the rated property.—*Reg. v. Bagshawe and Others*, 75 L.T. 513.
- (iv.) **C. A.**—*Tithe Rent Charge—Rateable Value—Deductions.*—In assessing rectorial tithe rent charge to the poor rate no deduction is made for liability for repairs to the parish church; and quarter sessions can only make an allowance for tenant's profits when it finds as a fact that the allowance for expenses is insufficient.—*The Dean and Chapter of St. Asaph v. The Overseers of the Parish Llanrhaidr yn Mochnant and the Assessment Committee of Ilanffyllin Union*, L.R. [1897] 1 Q.B. 511; 76 L.T. 42.
- (v.) **Q. B. D.**—*"Line of Railway"—"Land Used as Railway."*—Local Acts which prescribe a principle of assessment for "a line of railway" and "land used as a railway" different from that for "stations, buildings, and other hereditaments" the words "line of railway" include only the land on which the rails are laid and the connected works stand; and the words "land used as a railway" include the line and works on the land necessary for the use of the railway. Special assessment advantages given to a railway to be constructed under a particular Act do not extend to land acquired for the same purpose under later Acts.—*London and North Western Railway v. Llandudno Improvement Commissioners*, L.R. [1897] 1 Q.B. 287; 75 L.T. 659.

### Revenue:—

- (vi.) **C. A.**—*Succession Duty—New Succession—Succession Duty Act, 1853* (16 & 17 Vict., c. 51), ss. 2, 15, 17, 18.—Decision of Court below (see Vol. 22, p. 31, iii.) affirmed.—*Attorney-General v. Lord Wolverton*, L.R. [1897] 1 Q.B. 231; 75 L.T. 569.
- (vii.) **C. A.**—*Stamp Duty—Foreign Marketable Securities—Stamp Act, 1891* (54 & 55 Vict., c. 39), s. 82, sub-s. 1.—Decision of Court below (see Vol. 22, p. 52, iv.) affirmed.—*Chicago Railway Terminal Elevator Co. v. Commissioners of Inland Revenue*, 75 L.T. 572.
- (viii.) **C. D.**—*Estate Duty—"Incumbrance"—Finance Act, 1894* (57 & 58 Vict., c. 30), s. 6 (sub-s. 2); s. 7 (sub-s. 1), s. 8 (sub-s. 3 & 4), s. 9 (sub-s. 4 & 5), s. 14 (sub-s. 1).—By a revocable *post nuptial* settlement trustees were to hold a specified part of the trust fund upon certain trusts and the residue in trust for the settlors, his executors, &c. *Held*, that the

specified part was not an "incumbrance" within sect. 7 (1) of the Finance Act, and must bear a rateable proportion of the estate duty.—*In re Meyrick; Meyrick v. Hargreaves*, L.R. [1897] 1 Ch. 99; 75 L.T. 621.

- (i.) **C. A.**—*Stamp Duty—Licence to use Patent in One of the Colonies—Stamp Act, 1891, s. 59, sub-s. 1.*—Decision of Court below (see Vol. 22, p. 26, vi.) affirmed.—*The Smelting Co. of Australia v. Commissioners of Inland Revenue*, L.R. [1897] 1 Q.B. 175; 75 L.T. 534.
- (ii.) **H. L.**—*Probate Duty—Colonial Mortgage.*—Judgment of Court of Appeal (see Vol. 21, p. 82, vi.) affirmed.—*Sudeley (Lord) v. The Attorney-General*, L.R. [1897] A.C. 11; 75 L.T. 398.

### Sale of Goods:—

- (iii.) **C. A.**—*Goods "on Sale or Return" Pawned—Title of Pawnee—Sale of Goods Act, 1893 (56 & 57 Vict., c. 71), s. 18, r. 4.*—A good title is acquired by the pawnee where goods are pawned by a person to whom they were delivered on sale or return.—*Kirkham v. Attenborough; Kirkham v. Gill*, L.R. [1897] 1 Q.B. 201; 75 L.T. 543.

### School Board:—

- (iv.) **Q. B. D.**—*Election—Ballot Papers Marked with Crosses; or not Bearing Official Mark; or not Cancelled.*—Where, in a school board election, some of the voters had placed a cross on the ballot paper opposite to the names of the candidates for whom they desired to vote, instead of using figures to indicate the ratio in which they allotted votes, it was held, that one cross ought to count for one vote. Held, also, that ballot papers not bearing the official mark were properly rejected under sect. 2 of the Ballot Act, 1872, and that ballot papers which bore no mark of cancellation ought to be rejected.—*Morris and Others v. Bevis and Others*, L.R. [1897] 1 Q.B. 449; 76 L.T. 120.

### Sea Fisheries:—

- (v.) **Q. B. D.**—*"Removing from the Fishery"—Sea Fisheries (Shell Fish) Regulation Act, 1894 (57 & 58 Vict., c. 26), s. 1.*—The taking of shell fish from their bed with the intention of taking them away is, even if they are not actually taken away, a removal within the bye-laws under sect. 1 of the Fisheries Act of 1894.—*Thomson v. Burns*, 76 L.T. 58.

### Sea Walls:—

- (vi.) **Q. B. D.**—*Liability to Repair—Custom—Presumption of Legal Origin.*—A liability, asserted and submitted to for a long period, to keep in repair a sea wall, will be presumed to have had a legal origin unless the contrary is proved.—*London and North-Western Railway v. Commissioners of Sewers of Fobbing Levels*, 75 L.T. 629.

### Settled Land:—

- (vii.) **C. D.**—*Lease—Payment not as a Fine to Tenant for Life—Setting Aside Lease—Settled Land Acts, 1882 to 1890.*—A lease is void against trustees of the settlement if money not intended as a fine is paid by the lessee to the tenant for life on the granting of the lease.—*Chandler v. Bradley*, L.R. [1897] 1 Ch. 315; 75 L.T. 581.
- (viii.) **C. A.**—*Settled Land Act, 1882, ss. 2 (sub-s. 1, 8), 38, 59, 60—Settled Land Act Rules, 1882, App. Form 19—Infant Beneficiary—Residents in a Colony appointed as Trustees.*—Where an infant domiciled in New South Wales was entitled to a small share, which it was necessary to

sell, in real property in England, the Court appointed persons resident in New South Wales as trustees of the settlement.—*In re Simpson*; *in re Whitchurch*, 76 L.T. 131.

### Settlement:—

- (i.) **C. D.—Marriage Settlement—Appointments—Assignments—Interest—Costs.**—Under powers of a marriage settlement, the surviving parent made several successive appointments in favour of several of her children, and appointed the residue of the settled fund in favour of another child. Some of the appointees assigned or encumbered their shares. In the course of an action for administration of the trusts, questions arose as to interest and costs. *Held*, that interest at 4 per cent. from the death of the life tenant was to be allowed on the several appointments; *in re Goodenough*; *Marland v. Williams* (see Vol. 21, p. 1, ii.), not followed; and that one set of costs was to be given to each child in respect of the several appointments to him, the assignees of a child to divide the costs so allowed, rateably. *Cartwright v. Duc del Belzo* (see Vol. 21, p. 55, iii.) applied.—*In re Hill's Settlement Trusts*; *Hill v. Equitable Reversionary Interest Society, Limited*, 75 L.T. 477.
- (ii.) **C. A.—Will—Hotchpot Clause.**—By a settlement a contingent reversionary interest in a sum of money was reserved to the settlor, who by his will gave half the residue of his estate to the *cestui que trust*, on condition that the settled fund should be taken in part satisfaction of the bequest. *Held*, that the hotchpot clause operated as a gift to the legatee of the settlor's interest in the trust fund.—*In re Cosier*; *Humphreys v. Gadsden*, L.R. [1897] 1 Ch. 325; 75 L.T. 31.
- (iii.) **C. D.—Estoppel.**—Trustees of a will settled certain estates including estate B, to uses declared in the will, and a life tenant under the settlement caused himself to be registered in the land registry as owner in fee of estate B, and devised it. On an action by the person next entitled under the settlement, the devisee of B estate claimed that the language of the will of the first testator was inadequate to pass the estate, and that the person from whom he derived having been in possession for more than 20 years, had acquired a title in fee. *Held*, that the last testator and all claiming under him were estopped from denying as effectual the settlement under which he derived.—*Dalton v. Fitzgerald*, L.R. [1897] 1 Ch. 440; 76 L.T. 83.

### Ship:—

- (iv.) **C. A.—Charter-party—Dates for Arrival at Loading Port—Perils of Sea and Towage Clauses—Obligation to Load—Delays.**—A charter-party provided for the arrival at a loading port abroad, of several steamers, "as nearly as possible a steamer a month," unless prevented by perils of the sea, or by rendering assistance to vessels in distress. Cargo was to be presented 24 hours after notice. No. 2 ship, owing to perils of the sea, arrived late. While she was loading, No. 3 arrived, and had to wait till the loading of No. 2 was completed. No. 4 arrived late, owing to having assisted a disabled ship, but not so late as to have frustrated the object of the adventure. *Held*, that the shipowners were entitled to damages for detention of No. 3, and that as salvage services were allowed by the terms of the contract, the charterers were liable for damages for detention of No. 4, from the date of her arrival to date when loading was commenced.—*Potter and Co. v. Burrell and Son*, L.R. [1897] 1 Q.B. 97; 75 L.T. 491.
- (v.) **Q. B.—Charter-Party—Demurrage—Place of Discharge.**—A charter-party stated that a steamer was to proceed to a port named with a cargo of coal "and as usual and customary deliver some afloat to the order" of the charterers "alongside of any store, craft, &c." "Time for delivery

to count when steamer is ready to discharge." There was only one customary place to discharge and that was occupied when the steamer arrived. *Held*, that the time for delivery did not commence till the steamer was able to occupy the customary place of discharge.—*Sanders v. Jenkins*, L.R. [1897] 1 Q.B. 93.

- (i.) **Q. B.**—*Marine Insurance—Arrival in "Final Port"—Construction.*—A vessel was insured to certain places and "for 80 days after arrival in final port, however employed." *Held*, that "final port" meant final port of loading for the homeward voyage, and that the vessel was covered by the policy for 80 days after arrival in such port.—*Crocker and Others v. Sturge and Another*, L.R. [1897] 1 Q.B. 330; 75 L.T. 549.
- (ii.) **P. D.**—*Seamen's Wages Forfeited—"Slops" Supplied by Master—Gratuities Received by Master—Account with Owners.*—Where seamen had forfeited their wages by desertion, the master of the vessel was held entitled to debit the owners with "slops" previously supplied to the deserters, and the owners were held not entitled to debit him with money presents made to him by consignees on the discharge of the cargo.—*The Parkdale*, L.R. [1897] P. 53; 75 L.T. 597.
- (iii.) **P. D.**—*Collision—Bail—Arrest—Lis Alibi Pendens.*—A guarantee to answer for damages had been given by the agents of a British and a German ship which had come into collision at Rotterdam, and an estimate of the necessary repairs to both vessels had been made by Lloyd's surveyor, but no further proceedings were taken. The German ship having arrived at an English port, it was arrested in an action *in rem*; and on a motion by the owners for a release and a stay of proceedings, it was *held* that as the vessel was not arrested in Holland, the guarantee was no bar to an action in this country. *The Christiansborg*, 10 P.D. 141 distinguished.—*The Mannheim*, L.R. [1897] P. 13; 75 L.T. 424.
- (iv.) **P. D.**—*Collision—Swin Channel—Course of Navigation—Regulations for Preventing Collisions at Sea, Art. 21.*—An outward bound vessel navigating the channel between the Foulness or Whitaker, and the Middle Sands at the entrance to the Thames, contravenes Art. 21 if she passes the Swin Middle lightship on her starboard. Owing to alterations in lighting, the rule laid down in *The Minnie* (L.R. [1894] P. 336; 71 L.T. 715) no longer applies.—*The Oporto*, 75 L.T. 599.
- (v.) **H. L.**—*Maritime Lien—Admiralty Law—Law of Scotland.*—A steamer whose escape from peril in an open roadstead in Scotland was prevented by the moorings of another vessel, cut these moorings after warning, and in consequence of the severance the latter vessel suffered damage, for which the owner recovered judgment. *Held*, that the judgment did not give a maritime lien on the steamer as against a mortgagee. *The Bold Beccleuch* (7 Moo. P.C. 267) approved.—*Currie v. McKnight*, L.R. [1897] A.C. 97; 75 L.J. 457.
- (vi.) **Q. B.**—*Insurance—Liability of Brokers for Premiums.*—The liability of a broker to underwriters for premiums on a policy of marine insurance, extends not only to the ordinary Lloyd's policy, but to policies which contain a promise on the part of the assured to pay premiums.—*Universe Insurance Co. of Milan v. Merchants' Marine Insurance Co.*, L.R. [1897] 1 Q.B. 205.
- (vii.) **Q. B.**—*Marine Insurance—Warranty.*—A time policy on a steamer contained a proviso "warranted £2,400 uninsured." On the insolvency of an underwriter the owner, to cover an expected loss, increased the insurance to an amount which nullified the proviso. *Held*, that there had been no breach of warranty.—*The General Insurance Co. of Trieste, Limited (Assicurazione Generali) v. Cory and Others*, L.R. [1897] 1 Q.B. 335.

- (i.) **P. D.—Salvage—Derelict—Award.**—In remunerating salvors of a derelict, the Court will consider the risk of the derelict; the absence of anyone on board to assist the salvors; and the drain upon the salvors' crew. Where the salvors towed a derelict 850 miles, occupying eight days in the service, the Court awarded £3,000 on a value of £7,350.—*The Janet Court*, L.R. [1897] P. 59; 76 L.T. 172.

### Solicitor:—

- (ii.) **C. D.—Practice—Costs—Agency Charges—Solicitors Act, 1843 (6 & 7 Vict., c. 78), s. 37.**—In a country solicitor's bill, the items of charges made for professional work done by his London agents must be set out, otherwise it is not a complete bill, and it can be taxed, although a year has elapsed since its delivery.—*In re Pomeroy v. Tanner*, L.R. [1897] 1 Ch. 284; 75 L.T. 625.
- (iii.) **C. A.—Scale Fee—Solicitors Remuneration Act, 1881 (44 & 45 Vict., c. 44), General Order, Schedule 1, Part 2, First Scale; rule 6.**—In the scale, fixing the allowance to a lessor's solicitor for preparing a lease at rack rent the words "£2 10s. in respect to each subsequent £100 of rent" apply to complete sums of £100; and no change can be made under those words for any fraction of £100.—*In re McGarel (a lunatic)*, L.R. [1897] 1 Ch. 400; 76 L.T. 70.
- (iv.) **C. A.—Fund in Court—Payment out on Fraudulent Petition—Unauthorised use of Name of Firm of Solicitors—Condonation by one Partner—Liability.**—Where negligence or other breach of duty is committed by a solicitor, an officer of the Court, in a matter in which the Court has seized, the Court may and if it can do full justice, will summarily order its officer to make good the loss occasioned by his breach of duty. But the limit of liability is the measure of the loss flowing from the negligence or breach of duty. To constitute a binding adoption of acts *à priori* unauthorised, these conditions must exist, (1) the acts must have been done for, and in the name of the supposed principal, and (2) there must be full knowledge in him of what those acts were, or such an unqualified adoption that the inference may properly be drawn, that the principal intended to take upon himself the responsibility for such acts. It is not within the scope of the agency authority created by a partnership, for one partner in a firm of solicitors, to allow the use of the name of the firm by another solicitor, and thereby to bind his co-partner. Order of Court below (*see* Vol. 22, p. 30, v., in which the facts of the case are set out) varied.—*Marsh v. Joseph*, L.R. [1897] 1 Ch. 213; 75 L.T. 558.
- (v.) **C. D.—Discharge—Lien—Costs—Tender—Conditions of Delivery Up.**—New solicitors of a client obtained an order on his old solicitors for a bill of costs and taxation, and then tendered the amount stated to be due with a demand for delivery up of papers. The tender was refused, the old solicitors claiming a lien on the papers for *habeas corpus* proceedings against them on behalf of the client; a sum to be paid into Court to meet costs of taxation; and an undertaking in the event of a final balance being found in their favour to return the papers. On a motion for an order for delivery up, *held*, that the old solicitors were wrong in refusing the tender and must pay the costs of the motion (following *re Bevan* and *Whitting*, 33 Beav. 439); that they had no lien for costs in proceedings against them (following *re Taylor*, *Stileman* and *Underwood*, 1891, 1 Ch. 590), and must deliver up the papers in exchange for a receipt; that they were entitled to payment into Court to meet taxation (following *re Galland*, 31 Ch. D., 296); and that they were also entitled to an undertaking to return the papers in the event

of a balance being found in their favour (following *Bevan and Whitting and re Faithfull*, L.R. 6 Eq. 325). — *In re Hanbury, Whitting and Nicholson*, 75 L.T. 449.

**Tolls :—**

- (i.) **C. A.**—*Bridge Toll—Tramcar—Coach*—7 Geo. III., c. 73.—Where the owners of a bridge were empowered to charge sixpence for the passage of "every coach, chariot, berlin," &c., "drawn by more than two horses," and fourpence for the passage of "every waggon, wain, dray, car, or other carriage drawn by three or four horses," it was *held* that a tramcar drawn by three horses was liable to toll as a "coach." Decision of Court below reversed.—*Plymouth, Stonehouse, and Devonport Tramway Co. v. The General Tolls Co., Limited*, 75 L.T. 467.

**Trade Mark :—**

- (ii.) **C. A.**—*Registration—Portrait of Manufacturer as Distinctive Device—Infringement—Delay—Patents, &c., Act, 1888, s. 10, sub-s. 1 (c.)*.—Decision of C.D. (see Vol. 22, p. 31, iv.) affirmed.—*Rowland v. Michell*, L.R. [1897] 1 Ch. 71; 75 L.T. 498.

**Trust :—**

- (iii.) **C. A.**—*Purchase of Foreign Land by Trustee—Statute of Frauds, s. 7—Parol Evidence—Statutes of Limitation—Laches and Delay*.—More than 12 years after a purchase was made of lands in Ceylon by a person who subsequently became bankrupt, an action was commenced for a declaration that the purchaser was a trustee for the plaintiff. *Held*, that parol evidence that a conveyance of land absolute in form was upon trust may be given notwithstanding sect. 7 of the Statute of Frauds; though the statute may in other circumstances be a defence to proceedings in this country having for their object the enforcing of a trust of lands abroad (*Leroux v. Brown*, 12 C.B. 801). That bankruptcy trustees are not discharged from claims of a *cestui que trust* by sect. 49 of the Bankruptcy Act; that by sect. 25, c. 2, of the Judicature Act, 1873, "no claim of a *cestui que trust* on an express trust or on a breach of trust is barred by any Statute of Limitations;" and that laches and delay of a claimant depend upon the conduct of the parties as well as upon time. *Bartlett v. Pickersgill* (1 Eden 515) disapproved.—*De la Rochefoucauld v. Boustead*, L.R. [1897] 1 Ch. 196; 75 L.T. 502.
- (iv.) **C. A.**—*Precatory Trust*.—A testatrix in a document relating to family jewels wrote: "My mother-in-law told me that Sir R. H. gave them to her without any restriction. When I married she gave them to me for life with the request that at my death they might be left as heirlooms." *Held*, that there was no precatory trust.—*Viscountess Hill v. Dowager Viscountess Hill*, L.R. [1897] 1 Q.B. 483; 76 L.T. 103.

**Trustee :—**

- (v.) **C. D.**—*Loss—Liability—Indemnity by Trustee who was Solicitor to Trust*.—Where one of two trustees was a solicitor to the trust on whose advice the other without enquiry invested the trust funds in an improper security, it was *held* that both trustees were jointly and severally liable for the loss by the breach of trust and for the costs of the action, and that the solicitor must indemnify his co-trustee against the latter's share of the liabilities and costs.—*In re Turner; Barker v. Ivinney*, L.R. [1897] 1 Ch. 536; 76 L.T. 116.

**Vaccination :—**

- (i.) **Q. B. D.**—*Vaccination Act, 1867 (30 & 31 Vict., c. 86), s. 31—Sufficiency of Notice.*—Notice to a parent to have a child vaccinated need not be served personally. The question of the sufficiency of a notice is one to be determined by justices.—*Holloway v. Coster, L.R.* [1897] 1 Q.B. 346; 76 L.T. 57.
- (ii.) **Q. B. D.**—*Neglect—Signing of Summons and Order—Vaccination Act, 1867, s. 31.*—The justice who signs an order for vaccination need not be the same who signed the summons.—*Southcombe v. The Guardians of Yeovil Union, L.R.* [1897] 1 Q.B. 343; 76 L.T. 58.
- (iii.) **Q. B. D.**—*Power of Vaccination Officer to take Proceedings—Vaccination Act, 1867 (30 & 31 Vict., c. 84), s. 31—General Order of Local Government Board, October 31st, 1874, art. 16.*—Under sect. 31 of the Act a vaccination officer is empowered to take proceedings for an order directing a child to be vaccinated.—*Bramble v. Lowe, L.R.* [1897] 1 Q.B. 283.

**Vendor and Purchaser :—**

- (iv.) **Q. B.**—*Conditions of Sale.*—By conditions of sale of land within the metropolis, all outgoings up to the date fixed for completion were to be cleared by the vendor. Before that date the county council took down, in accordance with an order of a magistrate, dangerous structures on the land. *Held*, that the expenses of the demolition were outgoingss which the purchaser was entitled to recover from the vendor. *Midgley v. Coppock*, followed; *Boor v. Hopkins*, distinguished.—*Tubbs v. Wynne, L.R.* [1897] 1 Q.B. 74.
- (v.) **C. D.**—*Action for Rescission of Contract—Motion for Specific Performance—Receiver.*—In an action for rescission of a contract for the sale of leasehold lands on the ground of misrepresentation on the part of the purchaser who had been let into possession, it was *held* that a motion that the purchaser should deliver up possession in default of paying moneys he had agreed to pay, could not be allowed; but leave was given to amend the notice of motion and to ask for the appointment of a receiver to preserve the property from forfeiture by payment of the rents and rates.—*Cook v. Andrews, L.R.* [1897] 1 Ch. 266; 76 L.T. 16.

**Vestments :—**

- (vi.) **C. A.**—*Preaching in Black Gown.*—It is not illegal for a clergyman of the Church of England to wear a black gown in the pulpit when preaching.—*In re Robinson; Wright v. Tugwell, L.R.* [1897] 1 Ch. 85; 76 L.T. 95.

**Will :—**

- (vii.) **P. D.**—*Letter from Officer on Active Service—Construction—Wills Act (1 Vict., c. 26), s. 11—Probate.*—A British officer, on active service in the Maori War of 1864, wrote to his sister a letter, saying: "The chances are in favour of more of us being killed. . . . In case of accident, I wish to make everything I possess over to you. . . . There is money at Cox's and over £100 in N.S.W. Bank. . . . Keep this till I ask you for it. Your affectionate brother, J. Spratt." The testator returned to this country and died in 1894, having been for some time previously not on good terms with his sister. *Held*, that as there was no expression in the letter of any period within which alone it was to be operative, or any indication that it did not

apply to whatever property the testator might at any time be possessed of, the document was a valid will within sect. 11 of the Wills Act.—*In the goods of James Spratt*, L.R. [1897] P. 28; 75 L.T. 518.

- [ (i.) **C. A.**—*Construction—Uncertainty*.—A will ran: "I give all the residue of my estate unto the children of the deceased son (named Bamber) of my father's sister, share and share alike." There were three deceased sons of the father's sister, all of that name. *Held*, reversing decision of Court below, that the gift was void for uncertainty. *Hare v. Cartridge* (13 Sim. 165) distinguished.—*In re Stephenson; Donaldson v. Bamber*, L.R. [1897] 1 Ch. 75; 75 L.T. 495.
- (ii.) **C. A.**—*Construction—Tenant for Life and Remainderman—Trust for Sale with Power to Postpone—Trustees not Agreed*.—Decision of Court below as to power of remainderman to force trustees to sell (*see* Vol. 22, p. 54, iii.) reversed.—*In re Lever; Cordwell v. Lever*, 76 L.T. 71.
- (iii.) **P. D.**—*Misdescription of Legatees*.—A testator left £4,000 to the widow of a nephew for life, and afterwards in trust for her two children, but the Christian names by which these children were described in the will were the names of the children of another nephew to whom he left £2,000, and to whose wife he also left £2,000, both bequests with the like remainder to their two children who were described by the names of the widow's children. A motion, to omit from the probate the Christian names so transposed, was refused on the ground that it was not shewn that the testator did not mean the names to be inserted, and the point was left for a Court of Construction.—*In the goods of Alexander Durlacher (deceased)*, 75 L.T. 664.
- (iv.) **C. D.**—*Executor—Intermeddling—Remuneration—Wilful Default*.—A solicitor who had been named as an executor, but who had not joined in proving the will and who claimed in all that he did to have acted as the agent of the executor who proved, was *held*, by having signed with the other executors a letter dealing with a policy on the testator's life, to have intermeddled with the estate and to be precluded from renunciation; but a delay in getting in the policy moneys was *held* not to warrant an account on the footing of wilful default, though some loss of interest had occurred.—*In re Stevens; Cooke v. Stevens*, L.R. [1897] 1 Ch. 422; 76 L.J. 18.
- (v.) **P. D.**—*Probate—Foreign Executor—Declaration instead of Oath—O. xxxviii., rr. 6, 14—Oaths Act, 1888 (51 & 52 Vict., c. 46)—Interpretation Act, 1889 (52 & 53 Vict., c. 63), s. 3*.—The Court accepted a declaration in lieu of an oath from a German executor who was precluded from taking the oath by the laws of his place of residence.—*In the goods of Caspari*, 75 L.J. 668.
- (vi.) **P. D.**—*Will in English Form—Scotch Domicile—Holograph Letter—Probate—Construction*.—A domiciled Scotchman before commencing a voyage with his wife, wrote a letter partly repeating and to some extent supplementing the provisions of his will made in English form. He and his wife returned and settled in England, where some years later he died. *Held*, that the letter was entitled to probate as a testamentary paper with the will; but that the effect should be left to a Court of Construction.—*Halford v. Halford (Boyce intervening)*, L.R. [1897] P. 36; 75 L.T. 520.
- (vii.) **P. D.**—*Duplicate Will—Part Retained by Testator not to be Found—Holograph Copy—Properly Executed Codicil admitted to probate Alone*.—In 1891, a testator executed a will in duplicate, one part of which he sent in the next year to a beneficiary, who subsequently tore it up by accident, but pasted together the fragments. No testamentary papers



were found on the decease of the testator in his repositories; but a friend produced a holograph copy of the will, and of a codicil stated to have been executed in 1892, and a later holograph properly executed codicil, described as "a second codicil to my will." *Held*, that the will and the first codicil were revoked by the testator, but that the second codicil was entitled to probate.—*Paige v. Brooks*, 75 L.T. 455.

- (i.) **C. A.**—*Duplicate Will—Destruction of One—Evidence.*—Hearsay evidence that a testator had declared that he had, with the intention of revocation, destroyed one part of a will executed in duplicate is not admissible. *Sugden v. Lord St. Leonards*; *Doe d. Shallcross v. Palmer*; in the goods of Ripley, applied.—*Atkinson v. Morris*. L.R. [1897] P. 40; 75 L.T. 440.
- (ii.) **C. D.**—*Gift for Life with Power to Dispose amongst a Class—No Gift Over.*—A wife gave by will real property to her husband for life, with "power to dispose of all such property by will amongst our children in accordance with the power granted to him as regards other property which I have under my marriage settlement." There was no gift over, and the husband died intestate. *Held*, that the power was a bare power, imposing no trust, and that there was no gift by implication to the children in default of appointment.—*In re Weekes's Settlement*, L.R. [1897] 1 Ch. 289; 76 L.T. 112.

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- Wood, *in re*; *e. p.* Fanshawe (L.R. [1897] 1 Q.B. 314), 22, 38, iv.
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- Wragg, Ltd.; *in re* E. J. (75 L.T. 652), 58, vi.
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# Quarterly Digest

OF

## ALL REPORTED CASES

IN THE

Law Times and Law Reports

FOR APRIL, MAY, AND JUNE, 1897.

By THOMAS J. BARNES, of the Middle Temple,  
Barrister-at-Law.

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### D I G E S T .

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Where a case has already been given in the Digest for a preceding quarter, the additional report is given after the name of the case, with a reference to the volume of the Digest in which it first appeared, the thick number being the number of the volume.

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#### Actio Personalis:—

- (i.) **C. D.**—*Obstruction to Light*—3 & 4 Wm. IV., c. 42, s. 2.—An obstruction to ancient light is an injury continuing from day to day, and therefore an action brought within six months of the decease of the tortfeasor can be maintained against his executors or administrators though the obstruction was completed by the deceased more than six months before his death.—*Jenks v. Viscount Clifden*, L.R. [1897] 1 Ch. 694; 76 L.T. 382.

#### Administration:—

- (ii.) **C. A.**—*Executor and Trustee*—"Wilful Default"—*Judicial Trustees Act*, 1896 (59 & 60 Vict., c. 35), s. 3.—Where the executor of a solicitor was reasonably satisfied that he could not maintain an action to recover costs from a client of his testator, it was held that he was not guilty of wilful default; and that even if he had been technically liable, he would have been excused under sect. 3 of the Judicial Trustees Act, 1896.—*In re Roberts*; *Knight v. Roberts*, 76 L.T. 479.
- (iii.) **C. D.**—*Administrator's Costs*—*Interest*—*Set Off*—O. lxx., r. 1.—An executor or administrator is entitled to his proper costs, and will not be ordered to pay interests on sums not improperly paid away by him, and an administrator of an intestate is entitled to set off against the next-of-kin's share costs which the next-of-kin had been ordered to pay to him.—*In re Jones*; *Christmas v. Jones*, 76 L.T. 454.

- (i.) **C. D.**—*Insolvent Estate—Crown Debt—Specialty and Simple Contract Debts—Priority—Hinde Palmers Act, 1869 (32 & 33 Vict., c. 46).*—A question arose under an order in an action for the administration of an insolvent testator's estate whether or not a crown debt should come out of the whole fund without distinguishing between specialty and simple contract creditors, and it was held that it was to be borne entirely by the portion of assets available for simple contract creditors. —*In re Bentinck; Bentinck v. Bentinck*, L.R. [1897] 1 Ch. 673; 76 L.T. 284.

### Annuitant:—

- (ii.) **C. D.**—*Annuity subject to Condition—Deficiency of Assets—Payment of Fund.*—Where a covenantor's estate was not sufficient to meet an annuity granted without any gift over for the life of the annuitant, or until he should do or suffer something by which, if the annuity had been his absolutely, it would have become vested in some other person, it was held, following *Wroughton v. Colquhoun* (1 De G. & Sm. 357), that a fund representing the balance of the covenantor's estate must be paid to the annuitant, the Court declining to follow *Carr v. Ingleby* (1 De G. & Sm. 362).—*In re Sinclair; Allen v. Sinclair*, L.R. [1897] 1 Ch. 921; 76 L.T. 452.

### Assignment:—

- (iii.) **C. A.**—*Assignment in form Absolute to Agent to Collect—Judicature Act, 1873, s. 25, sub-s. 6.*—A foreigner resident abroad assigned to enable another to sue for him in England a debt without consideration by a deed which purported to assign absolutely in consideration of £50. Held, reversing the judgment of the Court below, that it was a valid assignment within sect. 25, sub-sect. 6, of the Judicature Act, 1873, and enabled the assignee to sue in his own name for the benefit of the assignor.—*Wiesener v. Rackow*, 76 L.T. 448.

### Auction:—

- (iv.) **C. D.**—*Specific Performance—Sale of Lands by Auction—Signature of Auctioneer binding Purchaser—Delay—Delegation—Statute of Frauds.*—The defendant, under a mistake, bid, as a puffer at an auction, for freehold property, which was knocked down to him. He repudiated the contract at once, and refused to pay the deposit, but the auctioneer's clerk signed the usual memorandum, and a week afterwards the auctioneer signed another memorandum as agent for the defendant. Held, that though the mistake might be a defence to a claim for specific performance, it did not of itself affect the validity of the contract (*Tamplin v. James*). But that the action failed under the Statute of Frauds, for, as to the first memorandum, the auctioneer could not delegate his authority (*Pierce v. Corf*, L.R. 9 Q.B. 210; 29 L.T. Rep. 919), and the signature to the second memorandum was not contemporaneous with the auction (*Buckmaster v. Harrop*, 13 Ves. 456).—*Bell v. Balls*, L.R. [1897] 1 Ch. 663; 76 L.T. 254.

### Bankruptcy:—

- (v.) **Q. B.**—*Revocable Mandate—Fraudulent Preference Bankruptcy Act, 1883 (46 & 47 Vict., c. 52), s. 48.*—A solicitor just before bankruptcy conveyed real estate to trustees, without the knowledge of the cestuis que trust, to cover a breach of trust which he had committed. Held, that the deed was not a revocable instrument within the doctrine of *Garrard v. Lauderdale* (3 Sim. 1), and was not a preference to a creditor within the meaning of sect. 48 of the Bankruptcy Act, 1883.—*The Trustees of New, France and Garrard v. Hunting & Others*, L.R. [1897] 1 Q.B. 607; 76 L.T. 196.

- (i.) **Q. B.—Receiving Order—Assets and Costs—Bankruptcy Act, 1883, s. 7, sub-s. 3.**—That assets will probably be exhausted by costs is not a sufficient reason for refusing to grant a receiving order. *In re Betts*; *e. p. Betts* [1897] 1 Q.B. 50 distinguished.—*In re Jubb*; *e. p. Barman*, L.R. [1897] 1 Q.B. 641; 76 L.T. 329.
- (ii.) **Q. B.—Banker and Customer—Cheques Paid after Date of Receiving Order—Res Judicata.**—Where the banking account of a debtor's wife had been declared to be the account of the debtor, it was held that the trustee in bankruptcy could not recover from the bank the amount for which cheques had been honoured between the date of the receiving order and the date of the declaration; and further that the matter was *res judicata* as the point could have been raised on the motion for declaration.—*In re Montague*; *e. p. Ward v. London and South Western Bank*, 76 L.T. 203.
- (iii.) **Q. B.—Purchase by Partner of Member of Committee of Inspection—316 of Bankruptcy Rules, 1886.**—The purchase of part of a bankrupt estate by the partner of a member of a committee of inspection is not forbidden by rule 316 if the member has no interest in the purchase.—*In re Gallard*; *e. p. Gallard*, L.R. [1897] 2 Q.B. 8; 76 L.T. 327.
- (iv.) **Q. B.—Damages in Divorce Proceedings—Settlement Approved by Court—Intention to Defeat Creditors—Matrimonial Causes Act, 1857 (20 & 21 Vict., c. 52, s. 33).**—Damages obtained in divorce proceedings were settled with the approval of the Court so as to give a contingent life interest to the debtor. *Held*, that the case did not come within the doctrine of *Higginbotham v. Holme* (19 Ves. 88), as there could not be a settlement in fraud of creditors of money never in the debtor's possession, the application of which was in control of the Court; and a motion of the trustee in bankruptcy that the limitation was void as against him was negatived.—*E. p. Stephenson*; *Brown v. Stephenson*, 76 L.T. 328.
- (v.) **C. D.—Legacy—Forfeiture—Domicil.**—A domiciled Englishman had a life interest in a fund until it should "become vested in or payable to some other person." *Held*, that it was not forfeited by his being adjudicated a bankrupt in New Zealand on a creditor's petition. *In re Blithman* (L.R. 2 Eq. 23; 14 L.T. Rep. 61) followed.—*In re Hayward*; *Hayward v. Hayward*, L.R. [1897] 1 Ch. 905; 76 L.T. 383.
- (vi.) **Q. B. D.—Deed of Assignment—Acquiescence—Estoppel.**—A creditor who has assented to a deed of assignment for the benefit of creditors is estopped from presenting a bankruptcy petition against the debtor. *In re Stray* (L.R. 2 Ch. App. 374) followed.—*In re Hawley*; *e. p. Ridgway*, 76 L.T. 501.
- (vii.) **Q. B. D.—Deed of Assignment—Acquiescence—Estoppel.**—A creditor who has not expressly assented to a deed of assignment may be estopped by his conduct from setting up the deed as an act of bankruptcy, and cannot then set up a circular convening a meeting of creditors as a notice of suspension of payment.—*In re Woodroff*; *e. p. Woodroff*, 76 L.T. 502.
- (viii.) **Q. B. D.—Act of Bankruptcy during Currency of Bill of Exchange given for Debt—Affidavit—Bankruptcy Act, 1883, s. 6, sub-s. 1.**—A creditor who holds an acceptance of a debtor who commits an act of bankruptcy may treat the acceptance as dishonoured and present a petition based on the original debt. An affidavit of verification ought to state the existence of the acceptance and that the petitioning creditor is the holder.—*In re Raatz*; *e. p. Raatz*, L.R. [1897] 2 Q.B. 80; 76 L.T. 503.



- (i.) **Q. B. D.**—*Act of Bankruptcy—Deed of Arrangement—Proof of Execution—Deeds of Arrangement Act, 1887, ss. 6 & 11.*—Where a petitioning creditor alleges an act of bankruptcy by the execution of a deed of arrangement, he ought to prove the actual date of the execution. Even if the document is some evidence that its execution was on the day it bears date, it is not evidence strong enough for the Court to act upon.—*In re Slater*; *e. p. Slater*, 76 L.T. 529.
- (ii.) **Q. B.**—*Principal and Surety—Joint and Several Promissory Note—Payment by Surety—Right to Prove for Interest—Mercantile Law Amendment Act, 1856, s. 5—Bankruptcy Act, 1883, r. 20, Sched. 2.*—A claim for interest on the amount of a joint and several promissory note paid at maturity by a surety is a claim on an instrument in writing within the meaning of r. 20 of the rules of second schedule of the Act of 1883.—*In re Evans*; *e. p. Davies*, 76 L.T. 530.
- (iii.) **Q. B. D.**—*Act of Bankruptcy—Words understood as Notice of Intention to Suspend Payment—Bankruptcy Act, 1883, s. 4, sub-s. 1.*—Words which do not amount to a notice of intention to suspend payment, although the creditor to whom they are addressed so construes them, do not create an act of bankruptcy.—*In re Phillips*; *e. p. W. Thomas & Co.*, 76 L.T. 531.
- (iv.) **Q. B.**—*Bankruptcy Act, 1890, s. 3—Composition Secured by Promissory Notes—Overvaluation of Creditor's Security.*—Where a debtor's estate had been vested in trustees under a scheme approved by the Court, and instalments had been secured by joint and several promissory notes of the trustees, a creditor was held entitled to revalue his security and prove for the balance, but as the contract of the trustees was limited to the promissory notes, he was not entitled to payment of the composition in full.—*In re Morter*; *e. p. Nichols*, 76 L.T. 532.
- (v.) **Q. B. D.**—*Suspension—Review—Bankruptcy Act, 1890, s. 8.*—Suspension of discharge for five years should be reserved for only very bad cases.—*In re Swabey*; *e. p. Swabey*, 76 L.T. 534.

### Bill of Sale:—

- (vi.) **C. A.**—*Bills of Sale Act, 1878 (41 & 42 Vict., c. 31) s. 10—Defeasance—Landlord and Tenant—Contract to Purchase Reversion—Distress.*—The grantor of a bill of sale given to secure repayment of money at the end of a month, gave at the same time a mortgage by which he covenanted to pay on demand a sum of money which included the sum secured by the bill of sale. Held, that by sect. 10 the mortgage was a defeasance of the bill of sale. A contract by a lessee to buy the reversion does not determine the lease at law, but in equity it suspends the landlord's right to distress so long as the contract is enforceable by action for specific performance.—*Ellis v. Wright*, 76 L.T. 522.

### Bill of Exchange:—

- (vii.) **Q. B. D.**—*Banker—Cross Cheque Collected—Defective Title of Customer—Overdrawn Account—Protection to Banker—Bills of Exchange Act, 1882 (45 & 46 Vict., c. 61), s. 82.*—A banker who collects a crossed cheque to which his customer had no title, is protected from liability to the true owner by sect. 32 of the Bills of Exchange Act, and this protection is not impaired though the banker apply the proceeds of the cheque to a debt due to himself on the overdrawn account of the customer.—*Clarke v. The London & County Bank, L.R.* [1897] 1 Q.B. 552; 76 L.T. 293.

**Canal :—**

- (i.) **C. D.**—*Mining under Canal—Liability under Special Act—Undertaking by Public Body.*—By a special Act colliery owners were empowered to work minerals, not thereby injuring a canal; and the canal owners, for the preservation of their works, were entitled to treat for the cession of the right. *Held*, that the colliery owners were under no statutory obligation to the canal owners for working adjacent minerals and that for subjacent minerals they were not entitled to compensation if the canal owners gave an undertaking to release them from statutory liability and to themselves make good any damage caused to the canal.—*New Moss Colliery Co. v. Manchester, Sheffield, and Lincolnshire Railway Co.*, L.R. [1897] 1 Ch. 725; 76 L.T. 231.

**Charity :—**

- (ii.) **C. D.**—*Mortmain—Metropolitan Board of Works (Loans) Act, 1869* (32 & 33 Vict., c. 102), s. 5.—Consolidated stock of the Metropolitan Board of Works is impure personalty. *Cluff v. Cluff* considered.—*In re Crossley*; *Borrill v. Greenhough*, L.R. [1897] 1 Ch. 928; 76 L.T. 419.

**Colonial Law :—**

- (iii.) **P. C.**—*British Honduras—Registered Title to Land—Adverse Possession—Consolidated Laws of 1887*, c. 19, ss. 5 & 6, and c. 106, s. 30.—Twenty years' adverse possession of land will set up a title antagonistic to that of an owner registered under the Honduras Lands Titles Acts.—*The Belize Estate and Produce Co. v. Quilter*, L.R. [1897] A.C. 367; 76 L.T. 361.
- (iv.) **P. C.**—*Canada—Company—Winding-up—"Payment in Cash"—Revised Statutes of Quebec, 1722*, s. 1.—A *bonâ fide* transaction between a company and one of its shareholders which amounts to a payment is a "payment in cash" within Art. 1722, sect. 1, which is equivalent to sect. 25 of the Companies Act, 1867 (England).—*Larocque v. Beauchemin and Others*, L.R. [1897] A.C. 358; 76 L.T. 473.
- (v.) **P. C.**—*Cape Colony—Pondoland Annexation Act, 1894*, s.—*Governor—Proclamation Ultra Vires.*—The Governor of Cape Colony, for the public safety, ordered by proclamation the imprisonment of a native chief under the authority of an Act of the Colonial Legislature which made the territory where the chief resided "subject to such laws, statutes, and ordinances" as "the Governor shall from time to time by proclamation declare to be in force." *Held*, that the Governor had authority to enact in the territory laws, &c., already existing in other parts of the colony, but not to make new laws; and that the proclamation was *ultra vires*.—*Sprigg v. Sigcau*, L.R. [1897] A.C. 238; 76 L.T. 127.
- (vi.) **P. C.**—*Ceylon—Construction of Will—Fidei Commissum—Ordinance No. 21 of 1844, No. 10 of 1863, and No. 7 of 1871.*—Where a testator left property to three grandchildren jointly with benefit of survivorship and substitution of descendants as *fidei commissum*, *held*, that the heir-at-law of a deceased great-grandchild had no claim so long as any person could shew a title as institute or substitute.—*Hamini and Others v. Tillekeratne*, L.R. [1897] A.C. 277; 76 L.T. 210.
- (vii.) **P. C.**—*Natal—Company—Articles of Association—Meeting—Powers of Chairman.*—Where articles of association of a company provided that "the chairman may, with the consent of the members present at any meeting, adjourn the same," it was *held* that the chairman was

not bound to adjourn a meeting, even though the majority of those present desired the adjournment; and that a resolution carried after a motion for adjournment had been rejected by the chairman was effectual.—*Salisbury Gold Mining Co. v. Hathorn and Others*, L.R. [1897] A.C. 268; 76 L.T. 212.

### Company:—

- (i.) **C. A.**—*Substratum of Business Gone—Winding-up Notwithstanding—Ancillary Objects—Companies Act, 1862* (25 & 26 Vict., c. 89), s. 79, sub-s. 5.—On the failure of the special object which a company puts in the forefront of its memorandum of association, the substratum of the company is gone, and a winding-up order may be made though the company may have taken large powers in addition to its particular purpose.—*In re The Coolgardie Consolidated Gold Mines, Limited*, 76 L.T. 269.
- (ii.) **C. D.**—*Debenture Holder's Action—Uncalled Capital on Plaintiff's Shares—Companies Act, 1867*, s. 25.—Where, in a debenture holder's action, the chief clerk found that the plaintiff was a debtor for uncalled capital on which the debentures were charged, it was held that the certificate of the chief clerk contained a proper finding, and as the plaintiff had submitted to the jurisdiction the matter could be determined in her action.—*Madeley v. Ross Sleeman & Co., Limited*, L.R. [1897] 1 Ch. 505; 76 L.T. 321.
- (iii.) **C. A.**—*Winding-up—Issue of Paid-up Shares—Consideration—Misfeasance—Companies Act, 1867*, s. 25.—Agreements by a limited company to pay for property or services by paid-up shares are valid; and the liability of a shareholder to pay the amount represented by his shares can be discharged by any mode in which a specialty debt can be discharged. Decision of Court below (*see* Vol. 22, p. 58 (vi.)) affirmed.—*In re E. J. Wragg, Limited*, L.R. [1897] 1 Ch. 796; 76 L.T. 397.
- (iv.) **H. L.**—*Winding-up—Shares issued at a Discount.*—Holders of shares issued at a discount are, after outside debts and expenses have been discharged in a winding-up, liable to be called upon to pay their shares to the full amount in order that the rights of various classes of shareholders *inter se* may be adjusted. *Ooregum Gold Mining Co. v. Roper* explained and followed. Judgment of Court of Appeal (*see* Vol. 20, p. 37 (v.)) affirmed, Lord Herschell dissenting.—*Welton v. Saffery*, L.R. [1897] A.C. 299; 76 L.T. 505.
- (v.) **C. A.**—*Alteration of Articles—Issue of Preference Shares.*—Decision of the Court below (*see* Vol. 22, p. 42 (vi.)) reversed; and held that unless the memorandum of association of a limited company imposes a condition that there shall be equality amongst the shareholders, the company can by special resolution alter its articles and take power not contained in the original articles to issue preference shares. *Hutton v. The Scarborough Cliff Co.* (13 L.T. 57; 2 Dr. & Sm. 52) overruled.—*Andrews v. Gas Meter Co., Limited*, L.R. [1897] 1 Ch. 361; 76 L.T. 132.
- (vi.) **C. D.**—*Declaration of Dividend—Injunction—Alteration of Articles of Association.*—On the motion of a shareholder who had subscribed the memorandum of association of a company, the Court restrained the declaration of a dividend at a proposed general meeting of the company, on the ground that such a declaration would not be in accordance with the articles of association, but refused to restrain the company from altering its articles.—*Nicholson v. Rhodesia Trading Co., Limited*, L.R. [1897] 1 Ch. 434; 76 L.T. 147.

- (i.) **H. L.**—*Shares described on face as Fully Paid-up—Liability of Holder.*—A company which issues shares described on the face as fully paid, up is estopped from denying that they are so paid. Decision of Court of Appeal (see Vol. 22, p. 7 (i.), under name *In re Veuve Monnier et ses fils, Limited*), reversed.—*Bloomenthal v. Ford*, L.R. [1897] A.C. 156; 76 L.T. 205.
- (ii.) **C. D.**—*Action by Majority of Debenture Holders—Floating Charge—Foreclosure—Sale.*—Foreclosure was refused but an order for sale was made in an action by four out of a total of five debenture holders whose security was a floating charge upon the property of a limited company.—*In re The Continental Oxygen Co., Limited*; *Elias v. The Continental Oxygen Co., Limited*, 76 L.T. 229.
- (iii.) **C. A.**—*Auditors—Winding up—Misfeasance—Companies (Winding-up) Act, 1890, s. 10.*—Auditors, if they are appointed as officers of a company fall within sect. 10 of the Winding-up Act, even though they are irregularly appointed; but *primâ facie* an auditor is not an officer, and does not become one by happening to do some of the work which he would have to do if he were an officer in the proper sense of the word. Decision of the Court below (see Vol. 22, p. 60 (vi.)) reversed.—*In re The Western Counties Steam Bakeries and Milling Co., Limited*; *e.p. Parsons and Robtent*, L.R. [1897] 1 Ch. 617; 76 L.T. 239.
- (iv.) **C. A.**—*Shares—Underwriting Letter—No Communication of Acceptance—Authority to apply for Shares—Estoppel.*—By a letter declared to be irrevocable, a person engaged to underwrite shares in a company, and authorised an application for shares to be made in his name if he himself failed to apply. Acceptance was not communicated to him. *Held*, reversing the decision of the Court below, that communication of acceptance was necessary and therefore there was no contract; that in the absence of communication, he could not fail in his obligation to apply, and therefore the authority to apply in his name never arose; that there was nothing to shew that he was precluded from denying a failure on his part, and therefore the doctrine of estoppel did not apply.—*In re The Consort Deep Level Gold Mines, Limtd.*; *e.p. Stark and Elliston*, L.R. [1897] 1 Ch. 575; 76 L.T. 300.
- (v.) **C. D.**—*Articles of Association—Reduction of Capital—Loss of Voting Power of Class of Shareholders.*—A limited company had by its articles power to reduce its capital and power for a majority in a class of shareholders to consent to any scheme prejudicial to the class. Such a majority resolved to reduce the capital in a manner which would reduce the voting power of the class. *Held*, that the Court had power to sanction the resolution. The Continental Union Gas Company (7 Times L.R. 476) not followed.—*In re James Colmer, Limited*, 76 L.T. 323.
- (vi.) **C. A.**—*Writ of Prohibition—Examination of Company's Affairs by Board of Trade—Companies Act, 1862, ss. 56, 57, 58, 59, 60, 61.*—Neither an inspector appointed by the Board of Trade under sect. 56 of the Companies Act to inquire into the affairs of a joint stock company, nor the Board of Trade itself, is liable to a writ of prohibition in respect of the inquiry.—*In re The Grosvenor and West End Railway Terminus Hotel Co., Limited*, 76 L.T. 337.

### Contempt of Court:—

- (vii.) **C. A.**—*Breach of Injunction—Committal of Person Abetting.*—The Court has jurisdiction to commit for contempt a person who aids another against whom an injunction has been granted to commit a breach of the injunction.—*Seaward v. Paterson*, L.R. [1897] 1 Ch. 545; 76 L.T. 215.

**Contract:—**

- (i.) **C. A.**—*Building Contract—Penalties—Delay caused by Extras.*—A building contract provided under penalties for the completion of specified work and any additional works by a fixed date. Additional work was ordered, and the contract was not fulfilled by the time named. *Held*, that independently of construction of the contract, the building owner had, by ordering extra work, rendered it impossible for the builder to complete by the date, and had deprived himself of the right to claim the penalty.—*Dodd v. Churton*, L.R. [1897] 1 Q.B. 562; 76 L.T. 438.
- (ii.) **C. A.**—*Statute of Frauds—Memorandum in Writing—Letter and Envelope.*—Where a posted letter on which a contract was founded did not shew the name of the party to whom it was addressed, the envelope was, on verbal evidence connecting the two, held to make with the letter one document sufficient to satisfy sect. 4 of the Statute of Frauds.—*Peerce v. Gardner*, L.R. [1897] 1 Q.B. 688; 76 L.T. 441.
- (iii.) **C. A.**—*Contract to Take Debentures is Contract to Lend Money—Breach—Remedy—Measure of Damages.*—A contract to take debentures is a contract to lend money, and the remedy for breach is damages for actual loss, and only nominal damages can be recovered if no loss is proved.—*South African Territories, Limited, v. Wallington*, L.R. [1897] 1 Q.B. 692; 76 L.T. 520.

**Copyright:—**

- (iv.) **Q. B.**—*Unregistered Assignee—Action for Infringement—Copyright Act, 1842 (5 & 6 Vict., c. 45), s. 24.*—The assignee of a copyright must register himself as proprietor under sect. 24 of the Act of 1842 before he can maintain an action for infringement.—*The Liverpool General Brokers' Association, Limited, v. The Commercial Press Telegram Bureaux*, L.R. [1897] 2 Q.B. 1; 76 L.T. 292.

**County Court:—**

- (v.) **C. A.**—*Execution—Sale of Goods Wrongfully Converted—Title—County Court Act, 1888 (51 & 52 Vict., c. 43), s. 156.*—A purchase at a sale by a bailiff under sect. 156 of the County Court Act, 1888, confers a good title on the purchaser of goods the property of a claimant who does not give security or make a deposit as provided by that section.—*Goodlock v. Cousins*, L.R. [1897] 1 Q.B. 558; 76 L.T. 313.
- (vi.) **Q. B. D.**—*Appeal—Security for Costs.*—Where there is reasonable ground for appeal, the Court will not order security to be given for costs merely on the ground that the plaintiff has no visible means of paying them.—*Pritchett v. Poole*, 76 L.T. 472.
- (vii.) **Q. B. D.**—*Practice—Venue—County Court Act, 1888, s. 74—County Court Rules, 1889, O. v., r. 9a.*—A plaintiff can of right bring an action in the county court of the district within which the defendant dwells or carries on business. But it is within the discretion of the Judge of the court of the district where the cause of action arose, to give or refuse leave to the plaintiff to sue there.—*Reg. v. Turner (Judge) and Hodgson*, L.R. [1897] 1 Q.B. 445; 76 L.T. 556.

**Easement:—**

- (viii.) **C. A.**—*Light—Obstruction—Derogation from Grant—Conveyancing Act, 1881 (44 & 45 Vict., c. 41), s. 6, sub-ss. 2, 4.*—Vendors conveyed to the plaintiff a new house, windows of which overlooked a vacant piece of ground the property of one of the vendors, described in the conveyance

and plan as "building land." On this the owner built a house which interfered with access of light to the plaintiff's windows. *Held*, that there was nothing on the plan and description to shew an intention to exclude the operation of sect. 6 of the Conveyancing Act, 1881, and that the defendant was not entitled so to build on his land as to create an obstruction to the light which came to the windows of the plaintiff's house at the time of the grant by the defendant. *Swanborough v. Coventry*, 9 Bing 305, is not displaced by the *Birmingham, Dudley, and District Banking Co. v. Ross*, and *Myers v. Catterson*.—*Broomfield v. Williams*, L.R. [1897] 1 Ch. 602; 76 L.T. 244.

- (i.) **H. L.**—*Light and Air*.—On some remarks of their Lordships on the decision of the Court of Appeal (*see* Vol. 21, p. 9 (iii.)) the parties came to terms, on which that judgment was varied by consent.—*Chastey and Another v. Acland*, L.R. [1897] A.C. 155; 76 L.T. 430.
- (ii.) **C. D.**—*Obstruction of Photographer's Light—Injunction*.—A photographer, who had used his premises for less than twenty years, obtained an injunction to restrain the erection, or the keeping erected, a new building interfering with the access of light to his studio.—*Lazarus v. The Artistic Photographic Co., Limited*, 76 L.T. 457.

#### Factories:—

- (iii.) **Q. B. D.**—*Factory and Workshop Act, 1878* (41 & 42 Vict., c. 16), s. 51—"Open for Traffic on Sunday"—*Persons of Jewish Religion*.—A person of the Jewish religion employed a female of the same faith on a Sunday in a workshop which was open only for the receipt and despatch of goods of customers in pursuance of agreements previously made. *Held*, that the workshop was not "open for traffic on Sunday" within the meaning of sect. 51.—*Goldstein v. Vaughan*, L.R. [1897] 1 Q.B. 549; 76 L.T. 262.

#### Fixtures:—

- (iv.) **C. D.**—*Mansion House—Museum—Cases fixed to Wall—Stuffed Birds*.—Stuffed birds and animals fastened to boughs or rocks contained in iron cases fixed to the wall of a building erected as a museum are not fixtures passing with the mansion house.—*Hill (Viscount) v. Bullock*, L.R. [1897] 2 Ch. 55; 76 L.T. 417.

#### Foreign Court:—

- (v.) **C. A.**—*Company—Winding-up—Ship—Lien—Foreign Court—Companies Act, 1862*, s. 163.—Decision of Court below (*see* Vol. 22, p. 44 (ii.)) affirmed.—*The Minna Craig Steamship Co. and James Laing v. The Chartered Mercantile Bank of India, London, and China*, L.R. [1897] 1 Q.B. 460; 76 L.T. 310.

#### Gaming:—

- (vi.) **Q. B. D.**—"Place" for Purposes of Betting—*Betting Act, 1853* (16 & 17 Vict., c. 19), ss. 1 and 3.—At a horse race a bookmaker stationed himself in an unenclosed place and made bets. *Held*, that he was using a "place" for the purpose of betting within the meaning of sect. 3 of the *Betting Act, 1853*.—*McInany v. Hildreth*, L.R. [1897] 1 Q.B. 600; 76 L.T. 468.
- (vii.) **Q. B. D.**—Meaning of a "Place" used for Betting—*Betting Act, 1853* (16 & 17 Vict. c. 119), ss. 1 and 3.—Any area of enclosed ground, covered or uncovered which is known by a name or is capable of reasonably accurate description may be a "place" within the meaning of sect. 1 and 3 of the *Betting Act*.—*Hawke v. Dunn*, L.R. [1897] 1 Q.B. 579; 76 L.T. 355.

- (i.) **C. A.**—*Money lent for Deposit at Boxing Match.*—An action cannot be maintained for the recovery of money lent to be deposited with a stakeholder on conditions of repayment depending upon the result of a boxing match.—*Carney v. Plimmer*, L.R. [1897] 1 Q.B. 634; 76 L.T. 374.

### Husband and Wife:—

- (ii.) **C. A.**—*Divorce—Husband's Petition—Dispensing with Co-respondent—Matrimonial Causes Acts*, 1857 (20 & 21 Vict., c. 85), ss. 27 and 21; 1858 (21 & 22 Vict., c. 108) s. 11—*Divorce Court Rules*, 1865, rr. 2, 4, 6.—The Court will, according to the circumstances of each particular case, exercise the discretion conferred by sect. 28 of the Act to give leave to a petitioner for a divorce on the ground of his wife's adultery, to proceed without naming a co-respondent. *Jones v. Jones* (see Vol. 22, p. 11 (ii.)) disapproved.—*Saunders v. Saunders*, L.R. [1897] P. 89; 76 L.T. 330.
- (iii.) **C. A.**—*Deed of Separation—Judicial Separation—Alimony and Maintenance—Agreement set up in Bar—Matrimonial Causes Acts*, 1857, ss. 32, 34, 35; 1859, s. 4; 1866, s. 1.—On a dissolution of marriage or a judicial separation, the Court may grant maintenance, and may order alimony agreed to in a prior deed of separation to be increased, notwithstanding a covenant by the wife not to sue for an increased allowance. Decision of Court below (see Vol. 22, p. 62 (ii.)) affirmed. *Gandy v. Gandy* (30 Ch. Div. 57; 53 L.T. 306) considered.—*Bishop v. Bishop*; *Judkins v. Judkins*, L.R. [1897] P. 138; 76 L.T. 169 and 409.
- (iv.) **Q. B.**—*Summary Jurisdiction (Married Women) Act*, 1895, s. 11—*Appeal.*—The only mode in which a decision on an application for an order under the Act can be questioned is by appeal to the Probate, Divorce and Admiralty Division under sect. 11 of the Act.—*Manders v. Manders*, L.R. [1897] 1 Q.B. 474.
- (v.) **P. D.**—*Divorce—Alimony—Practice—Permanent Maintenance out of Income to which Husband had no legal right.*—The facts on which alimony *pendente lite* has been fixed are those in which permanent maintenance should be determined. The Court granted permanent maintenance out of an allowance made voluntarily to the respondent by a relative.—*Bonsor v. Bonsor*, L.R. [1897] P. 77; 76 L.T. 168.
- (vi.) **P. D.**—*Divorce—Suit of Wife for Judicial Separation—Counter Charge of Adultery—Leave to Intervene Refused to Alleged Adulterer.*—Where, in a petition by a wife for judicial separation, the husband counter-charged adultery, but asked for no relief, leave was refused to the alleged adulterer to intervene and defend.—*Farrell v. Farrell*, 76 L.T. 167.
- (vii.) **P. D.**—*Divorce—Variation of Settlement.*—Where a wife had obtained a decree absolute for dissolution of marriage, an ante-nuptial settlement of the husband's property was varied so to give her more than one-third of the income of the settled property, and after his death more than one-half, and the limitation of the settlement *dum sola virerit* was not imposed.—*Bashall v. Bashall*, 76 L.T. 165.
- (viii.) **P. D.**—*Divorce Practice—Notice to Queen's Proctor—23 & 24 Vict., c. 144, s. 7—36 Vict., c. 31.*—In an undefended suit by a husband for nullity of marriage, on an intimation from the Queen's Proctor that he did not intend to intervene at the initial stage of the proceedings, the case was set down for hearing after the undefended causes in the supplemental list had been disposed of.—*M. v. M., otherwise A.*, 76 L.T. 172.

**Innkeeper:—**

- (i.) **C. A.**—*Liability to Keep Guest.*—Decision of Q. B. D. (see Vol. 22, p. 65 (ii.)) affirmed.—*Lamond v. Richard*, L.R. [1897] 1 Q.B. 541; 76 L.T. 141.

**Insurance:—**

- (ii.) **Q. B.**—*Insurance of a Debenture—Postponement of Payment by Resolution of Debenture Holders—Liability of Insurer.*—The defendants insured the payment at maturity of “any principal sum due under” a debenture held by the plaintiff on condition that he did not consent to any modification of his rights. A subsequent meeting of debenture holders, which the plaintiff did not attend, passed a resolution assenting to postponement of payment. *Held*, that as the date of maturity, mentioned in the debenture, was past, the plaintiff was entitled to recover on his policy, the defendants succeeding to his rights.—*Finlay v. The Mexican Investment Corporation*, L.R. [1897] 1 Q.B. 517; 76 L.T. 257.

**Interpleader:—**

- (iii.) **Q. B.**—*Levy—Liability for Sheriff's Fees.*—An execution creditor unsuccessful in an interpleader issue is liable for the sheriff's fees.—*Blaker v. Seager and Others*, 76 L.T. 392.

**Landlord and Tenant:—**

- (iv.) **C. A.**—*Covenant by Landlord to Pay Water Rate—Water Supplied for Trade Purposes—Waterworks Clauses Act, 1847, s. 3—New River Company's Act, 1852, ss. 35, 38, 40.*—A covenant by the lessor to pay the water rate assessed in respect of the leased premises was held not to apply to the charge for water supplied to the lessee for trade purposes under agreement between him and the water company.—*Floyd v. Lyons & Co., Limited*, L.R. [1897] 1 Ch. 633; 76 L.T. 251.
- (v.) **C. A.**—*Lease of Hotel—Covenant to Sell Wines of Lessor Only—Covenant Running with Land—Benefit of Proviso—Ownership of Lessor's Business Severed from Reversion.*—A covenant in an hotel lease that the lessee will sell only wines supplied by the lessor his successors and assigns runs with the land without mention of the assigns of the lessee; and these assigns can claim the benefit of a proviso that so long as the covenant is observed there shall be an abatement of the rent, notwithstanding that the ownership of the lessor's business as a wine merchant is severed from the ownership of the reversion.—*White v. The Southend Hotel Co., Limited*, L.R. [1897] 1 Ch. 767; 76 L.T. 273.

**Licensing:—**

- (vi.) **Q. B. D.**—*Transfer of Licence—Protection Order—Alehouse Acts, 1828, s. 4; 1842, s. 1; Licensing Act, 1872 (35 & 36 Vict., c. 94), s. 3.*—A person licensed to sell intoxicating liquor can continue to do so on the licensed premises, although a magistrate has at his request granted a temporary authority or protection to another person.—*Andrews v. Denton*, L.R. [1897] 2 Q.B. 37; 76 L.T. 423.
- (vii.) **Q. B. D.**—*Power of Constable to Enter Licensed Premises—Licensing Act, 1874 (37 & 38 Vict., c. 49), s. 16.*—A constable is not empowered by sect. 16 to enter on licensed premises unless there is evidence by which



he may reasonably conclude that an offence against the Licensing Acts is being committed.—*Duncan v. Dowding and Others*, L.R. [1897] 1 Q.B. 575; 76 L.T. 294.

- (i.) **Q. B. D.**—“*Found Drunk on Licensed Premises*”—*Licensing Act, 1872, s. 12.*—A person, not an inmate of the house, “found drunk on licensed premises” during closing hours is liable to conviction under sect. 12 of the Licensing Act, 1872.—*Reg. v. Pelly and Another (Justices)*, L.R. [1897] 2 Q.B. 33; 76 L.T. 467.

### Limitations:—

- (ii.) **C. D.**—*Inspectorship Deed—Separate Estate—Whether Trust Express or Constructive—Statute of Limitations.*—Where a creditor of a partnership firm, which had executed a deed of inspection in 1833, claimed a fund standing to the credit of the personal representative of the last surviving partner, it was held on the construction of the deed that no express trust of separate estate had been created, and, therefore, that the claim was barred by the Statute of Limitations.—*Trevor v. Hutchins*, 76 L.T. 183.

### Local Government:—

- (iii.) **C. D.**—*Water Supply—Local Government Act, 1888 (51 & 52 Vict., c. 41), s. 57—Public Health Act, 1875 (38 & 39 Vict., c. 55), ss. 51, 52.*—The extension of existing water mains of an urban authority is not a construction of water works within the meaning of sect. 52 of the Public Health Act. *Cleveland Water Co. v. Redcar Local Board* followed.—*Corporation of Huddersfield v. Raventhorpe Urban District Council*, L.R. [1897] 1 Ch. 652; 76 L.T. 377.
- (iv.) **Q. B. D.**—*Borough Funds—Chief Constable respondent in Licensing Appeals—Power to pay Costs—Municipal Corporation Act, 1882, s. 140.*—A watch committee refused to allow the chief constable to act as respondent in licensing appeals to quarter sessions, but the borough Council gave him authority to do so and passed a resolution that his costs be paid. *Held*, that there was no right to use the borough funds for this purpose under the circumstances.—*Atty.-Genl. and the Newcastle Breweries, Limited, v. The Mayor, &c., of Tynemouth*, 76 L.T. 566.

### Lunatic:—

- (v.) **Q. B. D.**—*Lunacy Commissioners—Discretion—Certificate that Person detained may be Discharged—Lunacy Act, 1890 (53 & 54 Vict., c. 5), s. 49.*—The lunacy commissioners have, under sect. 49, discretion to refuse to discharge a person detained as of unsound mind, though two doctors gave a certificate that he may be safely discharged.—*Reg. v. The Lunacy Commissioners*, L.R. [1897] 1 Q.B. 630; 76 L.T. 353.
- (vi.) **C. D.**—*Foreigner found Lunatic Abroad—Fund in Court Transferred.*—Where there were funds in Court in the name of a foreigner found lunatic abroad the Court ordered the transfer of the fund to the proper official of the State in which the lunatic was domiciled. *In re Barlow's will* (57 L.T. 95; 36 Ch. D. 287) distinguished.—*In re De Linden; in re Sparrier; De Heyn v. Garland*, L.R. [1897] 1 Ch. 453; 76 L.T. 180.

### Malicious Representation:—

- (vii.) **Q. B.**—*Wilful Act—Physical Pain—Cause of Action.*—Where in consequence of a false and malicious statement by the defendant to a wife that her husband had been seriously injured, she suffered a dangerous

illness and her husband was put to expense thereby, it was held that the defendant had wilfully done an act calculated to cause physical harm and that an action would lie.—*Wilkinson and Wife v. Downton*, L.R. [1897] 2 Q.B. 57; 76 L.T. 493.

**Mandamus:—**

- (i.) **Q. B. D.**—*Consent under s. 13 of London Building Act, 1894 (57 & 58 Vict., c. 213).*—The Court will not grant a *mandamus* to the London County Council to hear and determine an application for consent under sect. 13 after a building has been erected contrary to the London Building Act, 1894.—*Reg. v. London County Council*, 76 L.T. 472.

**Married Woman:—**

- (ii.) **C. D.**—*Married Women's Property Act, 1882 (45 & 46 Vict., c. 75), ss. 5 and 19—Contingent interest under Will subsequent to Act—Addition of Separate use by the Act.*—By a will made subsequently to the Married Women's Property Act, a fund was left to trustees of a marriage settlement to be held for a married woman on the trusts of the settlement, under which property was settled to her separate use without power of anticipation, and in the event of her husband surviving her, as she should appoint and in default to her next-of-kin. *Held*, that the incident of separate use was added by sect. 5 of the Act, and that she could appoint her contingent interest under the will.—*In re Williams; Williams v. Grant*, 76 L.T. 150.

**Master and Servant:—**

- (iii.) **C. A.**—*Injury to Workman—Defect in Condition of Machinery—Employers Liability Act, 1880, s. 1, sub-s. 1.*—Decision of Court below (*see* Vol. 22, p. 68 (iii.)) affirmed.—*Tate v. Latham & Sons*, 76 L.T. 336.

**Metropolis:—**

- (iv.) **C. A.**—*Drainage—Repairs—Metropolis Management Act, 1862 (25 and 26 Vict., c. 102), s. 112.*—The "Metropolitan Commissioners of Sewers" referred to in sect. 112 of the Metropolis Management Act, 1862, are those constituted by 11 & 12 Vict., c. 112.—*Appleyard v. The Vestry of Lambeth*, 76 L.T. 442.
- (v.) **Q. B. D.**—*Delegation of Powers by Vestry to Committee—Metropolis Management Act, 1855, ss. 58, 82, 85; Amendment Act, 1862, s. 64—Public Health Act (London), 1891, s. 3.*—A summons for non-compliance with a notice under the Public Health Act, taken out by order of a committee appointed by a vestry, was dismissed by the magistrate on the ground that the vestry had not approved under sect. 58 of the action of the committee until after service of the notice. *Held*, that approval need not be given before service of the notice.—*Firth v. Staines* L.R. [1897] 2 Q.B. 70; 76 L.T. 496.
- (vi.) **Q. B. D.**—*"New Street"—Metropolis Management Act, 1855 (18 & 19 Vict., c. 20), s. 105; Amendment Act, 1862 (25 & 26 Vict., c. 102), ss. 77 and 112.*—A private road, which had existed before the Highway Act, and had not been altered, had on one side a public footpath, and on the other the backs of houses permanently cut off from access to it by a fence let into the soil. The local authority proposed to pave the road under sect. 105 of the Act of 1855, and claimed contribution from the owner of the road under sect. 77 of the Act of 1862. *Held*, that the road was not a "new street" within the meaning of sect. 105, and therefore, though there was evidence to shew that the owner was a frontager, he was not liable to contribute.—*Arter v. The Vestry of Hammersmith*, L.R. [1897] 1 Q.B. 646; 76 L.T. 390.

**Mines:—**

- (i.) **Q. B. D.**—*Abandoned Mine—Obligation to Fence—Metalliferous Mines Regulation Act, 1872* (35 & 36 Vict., c. 77), s. 13 (2), s. 41—*Derbyshire Mining Customs and Mineral Courts Act, 1852* (15 & 16 Vict., c. 163).—A mine had been abandoned for 30 years, and all trace of the last workers was lost. *Held*, that the mine reverted to the owner of the soil, who was liable to fence under sect. 13 of the Act of 1872.—*Duke of Devonshire v. Stokes*, 76 L.T. 424.

**Mistake:—**

- (ii.) **C. D.**—*Consent Order—Set Aside—Evidence of Counsel*.—An order expressed to be by consent was set aside on the ground of mistake, though it had been construed by two Courts.—*Wilding v. Sanderson*, 76 L.T. 346.

**Mortgage:—**

- (iii.) **C. D.**—*Equitable Mortgage—Vesting Declaration—Legal Mortgage—Notice*.—A person who purchased a freehold in 1883 sold it, and later repurchased it, taking a conveyance free from incumbrance. He then deposited as equitable mortgage with a bank the conveyance of 1883, suppressing all mention of subsequent dealings with the estate, and by the memorandum of deposit he declared himself a trustee for the bank, and gave to the bank power to appoint new trustees and to vest in them the estate. He then borrowed money from a relative and executed a legal mortgage to him of the whole estate, "subject to the deposit with the bank and to the memorandum accompanying the same." *Held*, that the vesting declaration was effectual to pass the legal estate to new trustees appointed by the bank.—*London and County Banking Co., Limited, v. Goddard*, L.R. [1897] 1 Ch. 642; 76 L.T. 277.
- (iv.) **H. L.**—*Power of Sale to one of several Mortgageors*.—Decision of Court of Appeal (*see* Vol. 22, p. 169 (vi.)) affirmed.—*Kennedy v. De Trafford and Dodson*, L.R. [1897] A.C. 180; 76 L.T. 427.

**National School:—**

- (v.) **C. A.**—*Trustees—Street Paving—Sale or Mortgage—Public Health Act, 1875* (38 & 39 Vict., c. 55), ss. 4, 257; *School Sites Act, 1841* (4 & 5 Vict., c. 38), ss. 6, 7, 15.—Though trustees of a national school, the site of which was conveyed under the Act of 1841, are liable for metalling a road on which their premises abut, the charge cannot be enforced by sale or mortgage of the premises free from the trusts. Decision of Court below (*see* Vol. 22, p. 19 (iv.)) varied.—*Hornsey District Council v. Smith*, L.R. [1897] 1 Ch. 843; 76 L.T. 431.

**Nuisance:—**

- (vi.) **C. A.**—*Vacant Land—Injunction—Public Health (London) Act, 1891* (54 & 55 Vict., c. 76), ss. 13, 35, 138.—On appeal from the decision of the Court below (*see* Vol. 22, p. 70 (ii.)) the Court of Appeal declared the Attorney-General entitled to an injunction, and gave liberty to apply.—*Attorney-General v. Tod-Heatly and Brownrigg*, 76 L.T. 174; L.R. [1897] 1 Ch. 560.

**Patent:—**

- (vii.) **C. A.**—*Action for Infringement—Threats—Claim for Injunction—Patents, etc., Act, 1883* (46 & 47 Vict., c. 57), s. 32.—Plaintiffs brought an action against the defendants for infringement of a patent, and after-

wards published a statement to that effect. *Held*, that as the plaintiffs were prosecuting the action, an injunction would not, having regard to the proviso at the end of sect. 32 of the Patents Act of 1883, be granted to restrain the publication.—*The Dunlop Pneumatic Tyre Co., Limited, v. The New Seddon Pneumatic Tyre or Self-closing Tube Co., Limited*, 76 L.T. 405.

- (i.) **C. A.**—*English Patent—Infringement—Goods made Abroad—Sent by Post to England.*—Decision of Court below (*see* Vol. 22, p. 71 (iii.)) reversed; Rigby, L.J., dissenting.—*Badische Anilin und Soda Fabrik v. Johnson & Co., and the Basle Chemical Works Binschedler*, 76 L.T. 434.

### Poor Law:—

- (ii.) **C. A.**—*Settlement—Residence—Patient in Hospital—The Poor Removal Act, 1846 (9 & 10 Vict., c. 66), s. 1; Divided Parishes Act, 1876 (39 & 40 Vict., c. 61), s. 34.*—Three consecutive years “irremovable” residence is, by sect. 34 of the Divided Parishes Act, necessary to acquire a settlement by residence in a parish; and by the provisions of sect. 1 of the Poor Removal Act, 1846, there is not such a residence if the person for whom the settlement is claimed has been an in-patient of a hospital in any one of the years. *Dorchester Union v. Weymouth Union* (16 Q. B. D. 31; 54 L.T. 52) followed.—*St. Olave's Union v. Canterbury Union*, L.R. [1897] 1 Q.B. 682; 76 L.T. 517.

### Practice:—

- (iii.) **C. A.**—*Money Paid into Court—Communication to Jury—Validity of r. 22, O. xxii.*—R. 22 of O. xxii. is a valid rule, and no communication as to money paid into Court should be made to the jury until after verdict.—*Williams v. Goose*, L.R. [1897] 1 Q.B. 471; 76 L.T. 143.
- (iv.) **C. A.**—*Costs—Order as to, by Judge in Chambers—Power of Judge at Trial to Vary.*—Where Judge in Chambers has ordered that costs of an application under O. xvi., shall be costs, in the cause, a Judge at the trial cannot vary this order.—*Koosen v. Rose*, 76 L.T. 145.
- (v.) **P. D.**—*Administration with Will Annexed—Minors—Guardian—Form of Order—Probate Act, 1857 (20 & 21 Vict., c. 77), s. 73.*—A grant of administration with will annexed was made under sect. 73 to a guardian of minors “until one of the minors comes of age and applies.”—*In the Goods of Fredk. G. Lilley, deceased*, 76 L.T. 164.
- (vi.) **P. D.**—*Probate—Defence Delivered—Application to add another Defendant—Order—Costs.*—A plaintiff, who had every means of knowing before action the proper defendants, was required, on obtaining leave to join another defendant after the statement of defence was delivered, to pay all the defendants’ costs thrown away by the non-joinder.—*Coke v. French*, 76 L.T. 163.
- (vii.) **P. D.**—*Administration—Revocation of Grant—Administrator ordered to file Accounts.*—Where, on the discovery of a will, a grant of administration was revoked and probate granted, the administrator was ordered to furnish an account shewing how he had disposed of the estate.—*Jenkins v. Jenkins*, 76 L.T. 164.
- (viii.) **C. D.**—*Motion for Final Judgment against one Defendant—O. xxvii., r. 12.*—Where one of several defendants admits the plaintiff’s claim, it is not necessary, if the cause of action is severable, to serve the other defendants with notice of motion for final judgment against him.—*Macmillan v. Australasian Territories, Limited, and Others*, 76 L.T. 182.

- (i.) **P. D.—Divorce—Wife's Costs.**—Where, in a husband's petition for divorce, the wife made counter-charges but did not go into the witness-box, and a rule nisi was granted, the usual order for the wife's costs was refused, on the ground that the solicitor for the wife had not investigated the reasonableness of the grounds put forward by her as a defence.—*Walker v. Walker and Lawson*, 76 L.T. 234.
- (ii.) **P. D.—Divorce—Wife's Costs.**—Where a husband on a petition by him for divorce had been ordered to pay costs incurred by the wife's solicitor and without paying them had obtained leave to proceed in *forma pauperis*, it was ordered that proceedings be stayed till he satisfied the order.—*Joseph v. Joseph and Burnhill*, 76 L.T. 236.
- (iii.) **C. D.—Discovery—Lien of Former Solicitor—Claim for Negligence.**—A defendant in answer to a summons for discovery and production alleged that the documents were in possession of a former solicitor whose lien he was unwilling to discharge as he had a claim against him for negligence. *Held*, according to *Rodick v. Gandell* (12 Beav. 325) and *Vale v. Oppert* (5 Ch. Div. 569) that this did not release the defendant from the obligation to produce them, but that the Court would take care that he should not be subject to oppression.—*Lewis v. Powell*, L.R. [1897] 1 Ch. 678; 76 L.T. 282.
- (iv.) **H. L.—Costs in Action Paid to Solicitor—Judgment Reversed—Liability to Repay.**—Decision of Court of Appeal (see Vol. 22, p. 22 (viii.), *Hood-Barrs v. Heriot*) affirmed; *Fitzmaurice v. Jordan*, 32 L. Rep. Ir. 112 not followed.—*Hood-Barrs v. Croosman*, L.R. [1897] A.C. 172; 76 L.T. 297.
- (v.) **H. L.—Costs—Married Women—Restraint on Anticipation—Appeal—Married Woman's Property Act, 1893, s. 2.**—The words of sect. 2 "in any action or proceeding instituted" refer to litigation initiated by a married woman, and not to an appeal from a judgment in an action brought against her, and the provision as to costs in that section do not apply to such an appeal.—*Hood-Barrs v. Heriot* (2nd Appeal), L.R. [1897] A.C. 177; 76 L.T. 299.
- (vi.) **C. A.—Jurisdiction of Master—Compensation under Lands Clauses Act—Regulation of Railways Act, 1868 (31 & 32 Vict., c. 119), s. 41—Judicature Act, 1873 (36 & 37 Vict., c. 66), s. 16—O. liv., r. 12.**—A master has jurisdiction to hear an application made under sect. 41 of the Railways Act, 1868, for the trial in the High Court of a question of compensation.—*In re Donisthorpe's Claim and the Manchester, Sheffield, and Lincolnshire Railway Co.*, L.R. [1897] 1 Q.B. 671; 76 L.T. 371.
- (vii.) **C. A.—Discovery—Documents Referred to in Affidavit—O. xxxi., rr. 15, 16, 17, 18.**—A Judge in Chambers has jurisdiction to order inspection of correspondence referred to in an unfiled affidavit of an arbitrator prepared in opposition to a motion to set aside his award.—*In re An Arbitration between Fenner and Lord*, L.R. [1897] 1 Q.B. 667; 76 L.T. 376.
- (viii.) **C. A.—Appeal—"Criminal Cause or Matter"—Judicature Act, 1873, s. 47.**—Where the Divisional Court had quashed the conviction, under a local Act, of a corporation, for supplying gas of deficient illuminating power, it was held that no appeal would lie, as the judgment of the Divisional Court was in a "criminal cause or matter" within the meaning of sect. 47 of the Judicature Act, 1873.—*The Mayor, Aldermen, and Burgesses of Southport v. The Birkdale Urban District Council*, 76 L.T. 318.
- (ix.) **Q. B. D.—Mandamus—Vaccination Acts, 1867, 1871, 1874—General Orders of Local Government Board under those Acts (October 31st, 1874)—Public Health (London) Act, 1891.**—To maintain an application for mandamus, the prosecutor must have a specific legal right to enforce

the performance of the duty left unperformed. A district board of works have no legal right to require guardians of the poor to perform duties imposed by the Vaccination Act.—*Reg. v. Guardians of the Lewisham Union*, L.R. [1897] 1 Q.B. 498; 76 L.T. 324.

- (i.) **Q. B. D.**—*Bankruptcy—Receiving Order on Appeal—Date.*—A receiving order granted on appeal is dated as if made on the date of the application to the Court below.—*In re Raatz; e. p. Carlihan*, 76 L.T. 330.
- (ii.) **C. A.**—*Jurisdiction—Order Stayed by Supplemental Order.*—There is jurisdiction in the Court, on further facts being brought to its knowledge, to make a supplemental order staying, until antecedent directions are complied with, the operation of a previous order. Where a trustee has not complied with a direction to pay money into Court, an order made for payment to him of costs may be stayed by a supplemental order till he has complied with the neglected direction.—*In re Scowby; Scowby v. Scowby*, L.R. [1897] 1 Ch. 741; 76 L.T. 363.
- (iii.) **C. A.**—*Discovery—Inspection of Books in Use—Sealing or Covering up Parts.*—Where under an order for inspection of defendant's books, the plaintiff objected to any parts not under seal being kept from his examination, it was held that the defendant might be at liberty to refer to and cover up from time to time, without sealing, such parts as he could state on oath were not material to the action.—*Graham v. Sutton & Co.*, L.R. [1897] 1 Ch. 761; 76 L.T. 369.
- (iv.) **C. D.**—*Administrator Pendente Lite—Proceedings against—Court of Probate Act, 1857 (20 & 21 Vict., c. 77), s. 70.*—An administrator pendente lite is an administrator for all purposes except for the distribution of residue, and therefore can be sued by a creditor of the deceased.—*In re Toleman; Westward v. Booker*, L.R. [1897] 1 Ch. 866; 76 L.T. 381.
- (v.) **C. D.**—*Taxation—Mortgagee of Client—Joint Application.*—Where a mortgagee of a client joined, on the requisition of the Court, with the client in an application for taxation of a bill of costs the Court held that an order could not issue unless he joined the client also in a submission to pay what might be found due.—*In re Battams and Hutchinson*, L.R. [1897] 1 Ch. 699; 76 L.T. 385.
- (vi.) **C. D.**—*Receiver—Cost of Security.*—A receiver or receiver and manager finds security at his own cost if appointed at a salary, but if appointed without remuneration the cost of finding his security is allowed out of assets.—*Harris v. Sleep*, 76 L.T. 458.
- (vii.) **Q. B. D.**—*Employers Liability Act, 1880 (43 & 44 Vict., c. 42), s. 4—County Court Rules, 1889, O. x., rr. 10, 18.*—In an action under the Employers Liability Act, 1880, a defence that the notice required by sect. 4 of that Act had not been given, is a "statutory defence" within O. x., r. 18, of the county court rules, 1889, and, therefore, cannot be raised unless five days' notice has been filed in accordance with r. 10 of O. x.—*Conroy v. Peacock*, L.R. [1897] 2 Q.B. 6; 76 L.T. 465.
- (viii.) **Q. B. D.**—*Judgment and Finding of Official Referee—Appeal—O. xxxix., rr. 3 and 4—O. xl., r. 6.*—In an appeal from the decision of an official referee a new trial was asked for. Held, that the case came within rr. 3 and 4 of O. xxxix., and that the application was out of time.—*Forrest v. Todd*, 76 L.T. 500.

### Principal and Agent:—

- (ix.) **C. A.**—*Liability of Agent a Servant of Crown.*—A public servant of the Crown making, in that capacity, a contract, is not personally liable on the contract, or for breach of warranty to make it.—*Dunn v. Macdonald*, L.R. [1897] 1 Q.B. 555; 76 L.T. 444.

**Public Health:—**

- (i.) **C. D.**—*Urban District Council—Drainage—Surface Water—Right to Discharge into Stream—Public Health Act, 1875, ss. 15, 17, 308.*—A local authority made drains intercepting from the sewers the surface water of roads, and carrying it into a stream, the property of the plaintiff, which was the natural outlet for it. *Held*, that the authority had the right to so drain the roads, provided they observed the restrictions of sect. 17; that sand or silt is not filthy water within the meaning of that section; and that the plaintiff's remedy, if he had suffered damage, was to seek compensation under sect. 308.—*Durrant v. The Branksome Urban District Council*, 76 L.T. 486.
- (ii.) **C. A.**—*Liquids from Factory—Drains—Local Authority—Mandamus—Public Health Act, 1875, ss. 15, 21, 299.*—On the ground that an exclusive remedy is provided by sect. 299 of the Public Health Act, a mandamus cannot be granted to compel a local authority to provide, under sects. 15 and 21 of the same Act, sewers to carry off liquids from a factory in the district. Decision of Court below (*see Vol. 22, p. 75 (iii.)*) reversed. *Robinson v. Mayor of Workington* (*see Vol. 22, p. 67 (iv.)*) followed.—*Pebbles v. The Oswaldtwistle Urban District Council*, L.R. [1897] 1 Q.B. 625; 76 L.T. 315.

**Railway:—**

- (iii.) **Q. B. D.**—*Articles Deposited in Cloak Room—Liability for Damage.*—A notice on the ticket given to the depositor of articles in the cloak room of a railway, that "the Company will not be responsible for any package exceeding the value of £10," means that such an article is taken in at the owner's risk, and that the company has no responsibility for loss or damage to the article.—*Pratt v. South-Eastern Railway Co.*, L.R. [1897] 1 Q.B. 718; 76 L.T. 465.

**Rating:—**

- (iv.) **Q. B. D.**—*Valuation List—Notice of Objection to Rateable Value only—Union Assessment Committee Act, 1862 (25 & 26 Vict., c. 103), ss. 18, 19—Valuation (Metropolis) Act, 1869, ss. 11, 32.*—Where a ratepayer has given notice of objection to the rateable value, but not to the gross value of his hereditament, the assessment committee has no jurisdiction, without the consent of the overseer, to entertain an objection to the gross.—*Reg. v. London (Justices of)*, L.R. [1897] 1 Q.B. 433.
- (v.) **C. A.**—*Poor Rate—County Buildings Used Partly for Crown Purposes.*—Portions of a county building which are used partly for Crown purposes and partly for County purposes are rateable to the relief of the poor (*see also Vol. 22, p. 25 (vi.)*).—*The County Council of Worcestershire v. The Assessment Committee of the Worcester Union*, L.R. [1897] 1 Q.B. 480; 76 L.T. 138.
- (vi.) **Q. B. D.**—*Lighting and Watching Act, 1888 (3 & 4 Wm. IV., c. 90), s. 33—Brickfield—Property other than Land.*—On a brickfield were engines, engine houses, and other accessories of brickmaking, and a foreman's cottage. *Held*, that the land was the principal and the building the accessory, and taken as a whole, ought to be rated as land, but that if separately assessed, the foreman's house, and possibly some other structures, could be rated as a building.—*Overseers of the Poor for the Parish of Crayford and the District Council for Crayford v. D. & C. Rutter*, L.R. [1897] 1 Q.B. 650; 76 L.T. 392.

**Records:—**

- (vii.) **Consistory Court of London.**—*Public Records—Custody—Disposal.*—The Consistorial Court of London has the custody of

documents relating to the see of London, and may, through the Chancellor of London, order their relinquishment to a foreign power.—*The Log of the Mayflower*, 76 L.T. 295.

**Revenue:—**

- (i.) **C. D.**—*Account Stamp Duty—Liability—Customs and Inland Revenue Acts*, 1881 (44 & 45 Vict., c. 12), ss. 38 and 39; and 1889 (52 & 53 Vict., c. 7), s. 11.—Account stamp duty, in respect of property bestowed within twelve months of his death by a testator, is to be paid by the beneficiary who is required by sect. 39 of the Act of 1881 to render the account.—*In re Foster*; *Thomas v. Foster*, L.R. [1897] 1 Ch. 484; 76 L.T. 228.
- (ii.) **Q. B. D.**—*Estate Duty—Deduction for Mortgages—Annuities—Finance Act*, 1894 (57 & 58 Vict., c. 30), 1, 2 (1b), 7 (1b) and 7.—By arrangement between an equitable life tenant and an equitable tenant in tail in remainder, certain mortgages were effected on the estate, and the life tenant granted out of his own interest thus arising, an annuity to the equitable tenant in tail. On the death of the life tenant, it was held, that the amount liable to estate duty was the principal value of the estate less the mortgages, but without allowing any deduction for the capitalised value of the annuity.—*In re Estate Duty Payable on the Death of the 2nd Earl Cowley*, 76 L.T. 567.
- (iii.) **Q. B. D.**—*Settlement Estate Duty—Contingent Settlement—Finance Act*, 1894, s. 5.—An absolute settlement of part of an estate, together with the contingent settlement of the residue, is, for the purposes of the Finance Act, a settlement of the whole estate, and a contingent settlement of part is a settlement within the meaning of sect. 5.—*The Attorney-General v. Fairley and Others*, L.R. [1897] 1 Q.B. 698; 76 L.T. 526.
- (iv.) **Q. B. D.**—*Stamp Duty—Bonds of Foreign Railway Signed in England—Stamp Act*, 1891, s. 82 (1), (b) (i., ii., iii.).—Bonds of a foreign railway expressed not to be valid, unless authenticated by the certificate of a trustee, were sent over for the English holders, and for convenience or safety were signed in London. Held, that such bonds were issued in England within the meaning of the Stamp Act, sect. 82, and liable to duty.—*Baring v. Commissioners of Inland Revenue*, 76 L.T. 563.
- (v.) **Q. B. D.**—*Stamp Duty—Conveyance on Sale—Stamp Act*, 1891, ss. 54, 55, 73 and 1st sched.—A company resolved to amalgamate with another company and to exchange its shares for shares in the latter. Held, that an instrument by which a shareholder in the amalgamated company so exchanged its shares was a "conveyance on sale" within the meaning of sects. 54 and 55 (1) of the Stamp Act, and chargeable with *ad valorem* duty.—*J. and P. Coates, Limited, v. Commissioners of Inland Revenue*, L.R. [1897] 1 Q.B. 778; 76 L.T. 561.
- (vi.) **Q. B. D.**—*Estate Duty—Finance Act*, 1894, ss. 1, 2 (b), 21, sub-s. 1.—A wife, who died before the commencement of the Finance Act, appointed a trust fund under powers of her marriage settlement, and probate duty was paid on the fund less the value of her husband's life interest. The husband died after the commencement of the Finance Act. Held, that estate duty was chargeable only on that portion of the trust fund (viz., the value of his life interest) upon which probate duty had not been paid.—*Attorney-General v. Dodington*, L.R. [1897] 1 Q.B. 722; 76 L.T. 557.
- (vii.) **C. D.**—*Succession Duty*.—Where under powers of a marriage settlement an appointment was made of so much of the settled fund as should be sufficient to raise a certain net sum, it was held, that as



the appointment was not of a net sum, the appointee took subject to succession duty. *Banks v. Braithwaite*, 8 L.T. 80, applied.—*In re Saunders*; *Saunders v. Gore*, L.R. [1897] 1 Ch. 888; 76 L.T. 345.

- (i.) **H. L.**—*Assignor of Policy of Insurance—Liability for Succession Duty or Account Duty—Succession Duty Act, 1853* (16 & 17 Vict., c. 51), ss. 2 and 17—*Customs and Inland Revenue Act, 1889* (52 Vict., c. 7), s. 11.—Seven years before his death a person assigned a policy on his own life to his daughter, who thereafter paid the premiums out of her own money. *Held*, that she was not liable to pay either succession duty or account duty on the amount received under the policy on the death of the insured.—*Lord Advocate v. Robertson*, 76 L.T. 125.

### Scotch Law :—

- (ii.) **C. D.**—*Scotch Will—English Decree of General Power of Appointment.*—The distribution of a fund passing under a general power of appointment created by a Scotch Will is regulated by Scotch law, though the power be exercised by the English Will of a domiciled Englishman.—*In re Bald*; *Bald v. Bald*, 76 L.T. 462.

### Settled Land :—

- (iii.) **C. D.**—*Jurisdiction—Repairs in Nature of Salvage—Capital—Settled Land Acts, 1882* (45 & 46 Vict., c. 38), s. 25; and 1890 (53 & 54 Vict., c. 60) s. 13, sub-s. 2.—The Settled Land Acts do not take away the jurisdiction of the Court to sanction, with the concurrence of a remainderman, expenditure, in the nature of salvage, of capital in the repair of farms on the estate of an infant tenant in tail in possession.—*In re Hawker's Settled Estates*; *Duff v. Hawker*, 76 L.T. 286.
- (iv.) **C. D. & C. A.**—*Jurisdiction—Pulling Down and Rebuilding Houses.*—The Court has no jurisdiction to direct the expenditure of settled money in pulling down and rebuilding houses. Decision of Court below affirmed.—*In re Montagu*; *Derbyshire v. Montagu*, L.R. [1897] 1 Ch. 685 and 2 Ch. 8; 76 L.T. 289 and 485.

### Settlement :—

- (v.) **C. D.**—*Covenant to Settle After-acquired Property of Wife.*—By a marriage settlement it was covenanted that any property above a certain value which the wife became entitled to during coverture should be subject to the settlement. Under a will she became entitled to income for life for her sole and separate use with restraint on anticipation, and out of it she saved and invested sums which amounted to more than the value mentioned in the settlement. *Held*, that as the income which she received was not subject to the covenant in the settlement, the covenant did not govern investments from such income. *Wallis v. Bendy* (see Vol. 20, p. 55 (iii.)) not followed.—*Finley v. Darling*, L.R. [1897] 1 Ch. 719; 76 L.T. 461.
- (vi.) **C. D.**—*Sale of Heirlooms—Investment—Conditions.*—Land purchased with the proceeds of heirloom chattels sold by the tenant for life was held not to be subject to charges to which other land, but not the settled chattels, was subject by the original settlement.—*In re The Duke of Marlborough and the Governors of Queen Anne's Bounty*, L.R. [1897] 1 Ch. 712; 76 L.T. 388.
- (vii.) **C. D.**—*Trust for Payment of Debts—Death of Settlor—Deed Irrevocable.*—By a re-settlement of estates a father and son were made successive tenants for life with remainder in tail to an infant, subject to a trust for payment of the father's debts. The deed was made in 1867, and the creditors had no notice of it. *Held*, that on the death of the

father the deed became irrevocable, and the tenant in tail took subject to the debts. *Synnot v. Simpson* (5 H.L. cases 121) followed. *Garrard v. Lauderdale* distinguished.—*Priestley v. Ellis*, L.R. [1897] 1 Ch. 489; 76 L.T. 187.

**Ship:—**

- (i.) **C. A.**—*Collision—Bye-Laws for Regulation of River Tyne*, 1884, Art. 20.—The distance from mid-channel which vessels must keep in entering the Tyne is not one to be measured on the chart, but must be such as to leave reasonable room for vessels to pass out of the river.—*The John O'Scott*, L.R. [1897] P. 64; 76 L.T. 222.
- (ii.) **C. A.**—*Damage—River Ribble Navigation—Hired Tugs—Liability*.—The corporation of Preston under their powers do the towage of the river Ribble, and for this purpose charter tugs. *Held*, that the corporation were responsible for the efficiency of the hired tugs and for the competence of the crews supplied by the tug owners.—*The Ratata*, L.R. [1897] P. 118; 76 L.T. 224.
- (iii.) **P. D.**—*Salvage—Tug and Tow—Negligence—Contributory Negligence—Unfair Bargain*.—A barque went ashore while being towed for a fixed sum by a tug which steered its own course and took no soundings. While the barque was ashore another tug offered assistance for £500, successful or not. This was accepted and the barque was got off by the two tugs. The owners of tug No. 1 claimed salvage and the owners of the barque counterclaimed for damage. *Held*, that, on the evidence, tug No. 1 was the cause of the disaster and therefore was not entitled to salvage; that as the master of the barque had not checked the course of the tug, the barque owners were guilty of contributory negligence and could not succeed on the counterclaim; and that £400 was sufficient remuneration for the second tug as the master of the barque entered into the agreement under compulsion and the tug ran no risk.—*The Altair*, L.R. [1897] P. 105; 76 L.T. 263.
- (iv.) **C. C.**—*Insurance—Master Part Owner—Mortgage—Barratry*.—Where the master of a ship is part owner an act barratrous against his co-owners is barratrous against his mortgagee. The fact that a master has scuttled a ship his part share on which he had mortgaged, is no defence to an action by the mortgagee on a policy of insurance on the vessel.—*Small and Others v. United Kingdom Mutual Insurance Co.*, L.R. [1897] 2 Q.B. 42; 76 L.T. 326.
- (v.) **P. D.**—*Salvage—Services Rendered by Request without Benefit*.—A vessel which stands by another upon request, is entitled to salvage remuneration, though no benefit is produced to the salvaged ship.—*The Cambrian*, 76 L.T. 504.
- (vi.) **P. D.**—*Collision—Arrest and Sale of Ship Abroad—Action in England to Limit Liability—Life Claimants*.—Owners of a British steamship, which had sunk a German vessel and been sold in Holland under a judgment of the local Court for less than enough to satisfy all claims, commenced an action in the English Admiralty Court for limitation of liability. *Held*, that the claimants who had recovered in Holland were not estopped from proving in the limitation action, and that life claimants were entitled to interest on the sum representing £7 per ton on the tonnage of the steamship from the date of collision.—*The Crathie*, L.R. [1897] P. 178; 76 L.T. 534.
- (vii.) **C. C.**—*Marine Insurance—General Average*.—The master of a ship in taking measures to repair damage on a voyage caused damage to the cargo. *Held*, that the ship and cargo were in peril; that the master's

act was a general average act, and the loss to cargo a general average loss.—*McCale & Co., Limited, v. Houlder & Co.*, 76 L.T. 469.

- (i.) **C. A.**—*Charter-Party—Timber—Custom of Port of London.*—A clause in a charter-party that timber should be “taken from alongside the ship at merchant’s risk and expense” is not inconsistent with the custom of the Port of London, under which it is the duty of the ship-owner to lower timber into a barge brought alongside to receive it.—*Aktieselskab Helios v. Ekman and Co.*, L.R. [1897] 2 Q.B. 83; 76 L.T. 537.

### Solicitor :—

- (ii.) **C. D.**—*Practice—Costs—Agency Charges—Taxation—Solicitors Act, 1843* (6 & 7 Vict., c. 73), s. 37.—In a case in which the facts were similar to those reported in Vol. 22, p. 80 (ii.), the Court made an order for taxation of a solicitor’s bill after the expiration of twelve months from its delivery, where agency charges, amounting to £15 in a bill of £146, were treated as disbursements.—*In re Pomeroy and Tanner*, No. 2, 76 L.T. 149.

### Specific Performance :—

- (iii.) **C. D.**—*Public-house—Sale—Licence “Affected”*—9 Geo. IV., c. 61, ss. 11, 14—5 and 6 Vict., c. 44, s. 1.—An agreement for the sale and purchase of a beer-house, with the off-beer licence attached, contained a proviso that if the licence should be endorsed or “otherwise affected” before completion, the proposed purchaser could terminate the agreement. He applied to the magistrates, without consulting the vendors, for authority to carry on the business till the next transfer day in the name of a nominee. The magistrate refused the application. On his claim to have the contract set aside, it was held, that the licence had not been “affected” within the meaning of the contract, and specific performance was decreed on a counterclaim.—*Tadcaster Tower Brewery Co. v. Wilson*, L.R. [1897] 1 Ch. 705; 76 L.T. 459.

### Trade Mark :—

- (iv.) **C. D.**—*“Magnolia” — Geographical Name — Character of Goods—Assignment—Patents, Designs and Trade Marks Acts, 1883 (s. 70), and 1888 (s. 10).*—A representation of a Magnolia flower, and the word “Magnolia,” notwithstanding that several towns in America are so named, may be available for trade marks; but the word cannot be used as the trade mark of goods made of a metal known as Magnolia, and a representation of the flower cannot be assigned as a trade mark of metal bearings by a foreign assignor who had a goodwill in the metal only.—*In re Magnolia Metal Co.’s Trade Mark*, 76 L.T. 190.

### Vendor and Purchaser :—

- (v.) **C. D.**—*Sale as Going Concern—Negotiations after Date fixed for Completion—Title and Draft Conveyance Approved — Reasonable Notice to Complete.*—Where the time fixed for the completion of the purchase of a public-house as a going concern was past by six weeks, a notice from the vendor, after the title and the draft conveyance had been approved, to complete in ten days, was held to be a reasonable notice.—*Smith v. Batsford*, 76 L.T. 179.
- (vi.) **C. A.**—*Contract Founded on Letters—Uncertainty of Date—Specific Performance.*—Decision of Court below (see Vol. 22, p. 61 (iii.)) affirmed.—*Simpson v. Hughes and Armstrong*, 76 L.T. 237.

- (i.) **C. D.—Partnership—Judgment for Dissolution and Sale—Purchase by one of other's Share—Copyholds conveyed as Freeholds—Compensation.**—On an enforced dissolution of partnership between two persons in a brewery business, one bought the other's moiety by tender. It was agreed that the title to tied houses should be accepted as it stood. Some which were conveyed as freeholds turned out to be copyholds, and the purchaser sought repayment of half the cost of enfranchisement. *Held*, that the principle laid down in *Mortlock v. Buller* (10 Ves. 315), and *Carr v. Wilkinson* (5 Ch. 536), that when a vendor contracts to sell more than he possesses the purchaser is entitled to compensation, applies only where the vendor knows the title and the purchaser does not. The point whether compensation could be enforced by a purchaser after the money had been paid and the conveyance executed did not therefore need decision.—*Hopcroft v. Hopcroft*, 76 L.T. 341.
- (ii.) **C. D.—Mortgage to Building Society—Power of Sale—Whether transferred to Assignee.**—A power of sale on a mortgage to a building society is not, according to *Bradford v. Belfield* (2 Sim. 263), transferred to the assignee of the mortgage debt not named in the power, and it was *held* that a good title had not been shewn by such an assignee to a purchaser from him.—*In re Rumney and Smith's Contract*, 76 L.T. 343.
- (iii.) **C. D.—Specific Performance—Insufficient Description—Parol Evidence—Statute of Frauds.**—An agreement provided for the sale and purchase of "twenty-four acres of land, freehold, and all appurtenances thereto, at T.," without any words of ownership. *Held*, that the description was insufficient, and that parol evidence was not admissible to shew that the land referred to was the plaintiff's.—*Plant v. Bourne*, 76 L.T. 349.
- (iv.) **C. D.—Settled Land—Power of Tenant for Life—Judicature Act, 1873** (36 & 37 Vict., c. 66), s. 25, sub-s. 4.—A tenant for life, after he had agreed to sell part of the settled estate, granted it to a trustee for years, on trusts, to secure a valuable consideration, and subject to those and to the term, to the use of his son, who was the succeeding life tenant, his heirs and assigns. *Held*, that having regard to sect. 25 (4) of the Judicature Act, 1873, and to the fact that it was for the benefit of the son that the father's life estate should be kept alive, this life estate was not merged and extinguished, and that the father had power to make a valid conveyance to his purchaser.—*The Barry Railway Co. and Lord Wimborne and the Vendor and Purchaser Act*, 1874, 76 L.T. 489.
- (v.) **C. A.—Voluntary Settlement—Bankruptcy—Title of Purchaser.**—A voluntary settlement is void under sect. 47 only from the time the title of the trustee, on the bankruptcy of the settler, accrues; and a *bona fide* purchaser before that time will have a good title against the trustee. *In re Briggs and Spicer* ([1891] 2 Ch. 127; 64 L.T. 187) overruled.—*In re Carter and Kenderdines Contract*, L.R. [1897] 1 Ch. 776; 76 L.T. 476.

### Vexatious Legal Proceedings:—

- (vi.) **Q. B. D.—Vexatious Actions Act, 1896** (59 & 60 Vict., c. 51), s. 1—*Retrospective Operation.*—The Act is retrospective, and the Court will consider the general character and result of actions alleged to be vexatious, whether brought before or since the passing of the Act.—*E. p. The Attorney-General; in re Alexander Chaffers*, 76 L.T. 351.

**Will:—**

- (i.) **C. D.**—*Construction—Settlement—Bequest on “same” Trusts—Accretion—Hotchpot.*—Where, in a will bequeathing money “upon and for the same trusts” as those expressed in a marriage settlement, there was no context to shew that, by the use of the word “same,” an accretion to the trust fund was intended, it was held, that a hotchpot clause in the settlement was not applicable.—*In re North*; *Meates v. Bishop*, 76 L.T. 186.
- (ii.) **C. D.**—*Construction—Whether Repairs and Outgoings Chargeable to Corpus or Income.*—Trustees were directed to manage the testator’s estate and to apply the income derived from leaseholds for the benefit of a tenant for life. Held, that “income derived” meant after payment by the life tenant of repairs and outgoings accrued since the death of the testator.—*In re Redding*; *Thompson v. Redding*, L.R. [1897] 1 Ch. 876; 76 L.T. 339.
- (iii.) **C. D.**—*Construction—Charitable Purposes.*—“Grants for or towards the purchase of advowsons or presentations” do not fall within charitable purposes.—*In re Hunter*; *Hood v. Attorney-General*, L.R. [1897] 1 Ch. 518; 76 L.T. 386.
- (iv.) **C. D.**—*Construction—Gift of Realty and Personality to Spinster and her Lawful Issue—Rule in Wild’s Case—Personal Representative.*—A testator gave real and personal property “for life to my ward E.” “and to any lawful issue she may have, such issue taking a vested interest in my said property upon attaining the age of 21 years.” E. survived the testator, but died unmarried and intestate. Held, that the word “issue” as used was a word of purchase and not of limitation; and that the heir-at-law of E. took the realty and her personal representative the personality.—*In re Wilmot*; *Wilmot v. Betterton*, 76 L.T. 415.
- (v.) **C. D.**—*Construction—Illegitimate Child.*—A testator gave a specific legacy to a person described in the will as “my said wife’s nephew J. W. R.” and gave a moiety of residue to “all and every the nephew and niece and the nephews and nieces of my said wife.” Held, that J. W. R., although he was illegitimate, was entitled his share in the residue.—*In re Parker*; *Parker v. Osborne*, L.R. [1897] 76 L.T. 421.
- (vi.) **C. D.**—*Construction—Tenant for Life and Remainderman—Rule in Howe v. Dartmouth.*—A testator directed that the rents and profits of the residue of his freeholds and leaseholds should be paid to his wife for life, and after her decease he gave and devised the said residue to persons named, subject to payment of certain annuities to whom he gave a power of distress. Held, that neither the direction as to rents and profits, nor the power of distress shewed any intention of the testator that the leaseholds should be enjoyed in specie, and that therefore the rule in *Howe v. Lord Dartmouth* (7 Ves. 137) applied.—*In re Game*; *Game v. Young*, L.R. [1897] 1 Ch. 881; 76 L.T. 450.
- (vii.) **C. A.**—*Residuary Legatee—Fund to be taken as Part of Residue—Hotchpot Clause.*—Where a will directed that a fund is to be taken by a residuary legatee as part of his share of residue, a hotchpot clause operates as a gift to the legatee of the testator’s interest in the fund—*Humphreys v. Gadsden*, L.R. [1897] 1 Ch. 325.

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